(27,081)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 357.

THE EASTERN EXTENSION, AUSTRALASIA AND CHINA TELEGRAPH COMPANY, LIMITED, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 29, 1919.

Court of Claims.

No. 30767.

THE EASTERN EXTENSION, AUSTRALASIA AND CHINA TELEGRAPH COMPANY, LIMITED,

vs.

THE UNITED STATES.

I. *Mandate of the Supreme Court. Filed October* 4, 1915.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Court of Claims, Greeting:

[SEAL.]

Whereas, lately in the Court of Claims, before you or some of you, in a cause between The Eastern Extension, Australasia & China Telegraph Company, Limited, claimant, and The United States, defendant, No. 30,767, wherein the judgment of the said Court of Claims, entered in said cause on the 2d day of December, A. D. 1912, is in the following words, viz:

"The Court, upon due consideration of the premises, sustains the demurrer of the defendants. It is therefore considered and adjudged that the petition of the claimant be and the same is hereby dismissed for reasons stated in the opinion of this Court.

"BY THE COURT".

As by the inspection of the transcript of the record of the said Court of Claims, which was brought into the Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress, in such case made and provided, fully and at large appears.

2 And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and thirteen, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said Court of Claims in this cause be, and the same is hereby, reversed.

And it is further ordered that this cause be, and the same is hereby, remanded to the said Court of Claims with directions to take further proceedings in conformity with the opinion of this Court.

December 1, 1913.

You, therefore, are hereby commanded that such further proceedings be had in said cause, in conformity with the *the* opinion and

judgment of this Court, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Edward D. White, Chief Justice of the United States, the nineteenth day of January, in the year of our Lord one thousand nine hundred and fourteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

3 II. *Amended Petition and Schedules "A," "B," and "C," Filed October* 4, 1915.

The Claimant, The Eastern Extension, Australasia and China Telegraph Company, Limited, hereby presents its amended petition, and alleges:

I. It is a corporation organized under the laws of United Kingdom of Great Britain and Ireland, and as such was, prior to 1879, and has ever since been authorized to construct, maintain and operate lines of submarine telegraph cables and lines of telegraph in various parts of the world, and particularly in the Far East, including Australasia, China and the Philippine Islands.

II. On or about February 22, 1879, the Claimant duly secured from the Kingdom of Spain, by royal authority, a grant and concession for the establishment and working of a submarine telegraph cable between the Island of Luzon, one of the Philippine Islands, and Hongkong in China, whereby Manila, on said Island of
4 Luzon, one of the Philippine Islands, was to be placed in communication with the universal telegraph system, and pursuant to which the Claimant was given an exclusive privilege for forty years to maintain cable communication between said points, together with a monthly subsidy of Four thousand Dollars ($4,000), payable for ten (10) years.

III. In consideration of said grant and concession, it was agreed by the claimant that the official correspondence of the Kingdom of Spain would be transmitted free of charge through the cable thereby authorized to be constructed and maintained, and with the right of priority to the Kingdom with respect to the transmission of its official correspondence for the term of the forty years of the duration of the aforesaid grant to the Claimant.

IV. Correct translations of the said grant and of the documents constituting the same (the originals of which were executed in the Spanish language and which will be produced on the trial hereof) are hereto annexed and marked Schedule A, and are hereby made a part hereof with the same force and effect as though the same were herein set forth in full.

V. In conformity with the provisions of said grant and concession, the Claimant laid a cable from Hongkong, in China, to Bolinao, on the Island of Luzon, whence, by means of land lines constructed

on said Island of Luzon, telegraph communication was instituted between Manila and Hongkong, and thence to all other parts of the world by means of other cable lines, a considerable portion of which were owned and controlled by the Claimant, and the Claim-
5 ant has, ever since the construction of said cable, except when prevented by causes beyond its control, actually operated and is still working the same.

VI. Thereafter, and on April 14, 1897, a further concession was granted by the Kingdom of Spain to the Claimant, whereby the Claimant became empowered to construct, establish and work three submarine telegraph cables, for the purpose of enabling the Islands of Luzon, Panay, Negros and Zebu, in the Philippine archipelago, to intercommunicate.

VII. Correct translations of said concession and of the several documents constituting the same (the originals of which were executed in the Spanish language and which will be produced on the trial hereof), and a copy of the conditions of said concession in the Spanish language, are hereto annexed and marked Schedule B, and are hereby made a part hereof with the same force and effect as though the same were herein set forth in full.

VIII. Among other conditions contained in the said grant and concessions are the following:

"Article 9. The Concessionaire undertakes to work, at his own expense and risk, the Cables of this Concession for a period of twenty years, the said term to begin from the date of the taking over of the Cables and their adjuncts in perfect working order."

"Article 10. The Concessionaire shall enjoy an annual subsidy of £4,500 (four thousand five hundred pounds sterling), payable monthly in twelve instalments, during the whole term of the working of the Cables, the said payments being made at Manila by the Chief Treasury Office of those Islands."

"Article 16. The Company holding the Concession shall pay the State the ten per cent. which tax in its application to cable-
6 grams is fixed after first deducting the amount of the expenses for the maintenance of the Stations, calculated at £6,000 (six thousand pounds sterling) per annum, the said expenses not to exceed the amount specified."

"Article 17. It shall be obligatory to transmit official despatches, which shall enjoy precedence, at half the rates charged for those of a private character. Official despatches, like private ones, shall be handed to the employes of the State for them to forward or deliver to the addressee."

"Article 18. The tax applicable to telegrams transiting over the said Cables shall be uniform,—fifty centimes of a franc per word,—no transmit nor terminal rate being charged for the telegraphic transmission over the land lines belonging to the Government in the

Islands of Panay, Negros and Zebu. There is a sur-tax of five centimes of a franc per word on telegrams transiting between the above mentioned Islands and the others of the Archipelago."

IX. Pursuant to the aforesaid grant and concession, and in conformity with its provisions, the Claimant duly constructed, established and placed into working order the three submarine telegraph cables specified in said concession, between the Islands of Luzon Panay, Negros and Zebu, and opened the same for traffic in October 1897, and has ever since maintained and operated them. These cables are known as the Visayas Cables and the islands which they connect are referred to as the Visayas Islands.

X. On March 30, 1898, a further concession was granted by the Kingdom of Spain, by royal grant, to the Claimant, for the establishment and working of a submarine cable from Hongkong and Manila in extension of the cable constructed under authority of the aforesaid grant of February 22, 1879, set forth in Schedule A aforesaid. The extension authorized by said grant of March 30, 1898, was completed in April 1898.

7 XI. By the terms of the said concession it was provided among other things, that the Claimant was to have an extension for twenty (20) years, expiring on May 8, 1940, of the monopoly theretofore enjoyed by it for the working of the Hongkong-Manila cable, until which date no other submarine telegraph line was to be laid between Hongkong and Manila; and that in the period of twenty years covered by such extension the Government might redeem the privilege of establishing cables in the islands then belonging to it in the Pacific Ocean, by the annual payment to the Calimant of Five thousand pounds (£5,000) sterling for the years covered by such extension which might then remain unexpired.

XII. Among other conditions for such concession there were set forth in the Schedule of Conditions annexed thereto the following:

"10. In all cases the Government official correspondence shall enjoy the privilege of priority of transmission by the Cable; and agreeably to the Service Regulations at present in force in the Philippine Islands, it shall be free of charge during the first ten years of the present Concession; for the ten years following it shall be paid at the rate of one-fourth the ordinary tariff, and at half the same during the aforesaid second period and until the expiration of the Concession."

"11. The Concessionaire shall fix the tariff for the private correspondence transiting over the Cable, the maximum rates for which shall not exceed those adopted by telegraph companies whose cables are similarly circumstanced."

XIII. Correct translations of the said grant and of the documents constituting the same (the originals of which were executed in the Spanish language and which will be produced on the trial hereof), are hereto annexed and marked Schedule C and are hereby made a

part hereof with the same force and effect as though the same
8 were herein set forth in full.

XIV. The Claimant has at all times since the making of the aforesaid grants and concessions, and of each of them, been, and continues to be, ready, able and willing to perform all of the conditions imposed upon it by the terms thereof, and of each of them, and has actually performed and fulfilled, and continues to perform and fulfill, each and all of the said conditions, and to comply with and perform all of the duties and obligations imposed upon it by the terms of the said several grants and concessions and each of them.

XV. Prior to December 10, 1898, the Islands of Luzon, Panay, Negros and Zebu, as well as the other islands in the Philippine Archipelago, constituted territory of the Kingdom of Spain, and were under its absolute jurisdiction. On that day a treaty was duly entered into between the duly constituted Governments of the United States of America and the Kingdom of Spain, which was signed at Paris, France, and was thereafter duly ratified by the respective Governments, whereby the Kingdom of Spain ceded to the United States of America the archipelago, known as the Philippine Islands, including the Islands of Luzon, Panay, Negros and Zebu, in consideration of which the United States of America agreed to pay, and thereafter in fact paid, to the Kingdom of Spain the sum of $20,000,000.

XVI. Pursuant to the said cession and grant of the Kingdom of Spain under the said treaty, the United States of America acquired title to and absolute jurisdiction over the said Philippine Islands, including the Islands of Luzon, Panay, Negros and Zebu, and
9 the full right of sovereignty over the said islands, and succeeded to the enjoyment of all of the rights incident thereto, and thereupon all of the rights and obligations of the Kingdom of Spain with respect to said islands and incident to the sovereignty thereof ceased.

XVII. Thereupon, and on or about the 10th day of December, 1898, the United States of America entered into the occupancy of said Philippine Islands, acquired as aforesaid, and proceeded to exercise, and has ever since exercised, sovereignty over the said islands, and especially over the Visayas Islands, and the inhabitants thereof, and assumed, and has ever since continued to assume, jurisdiction and control over all property and property rights in and upon said Philippine Islands, including the several lines of submarine cable and telegraph land lines established, constructed and operated by the Claimant under the aforesaid several grants and concessions, and availed itself, and has continued to avail itself, of all of the benefits and advantages thereof, using the said lines of cable and telegraph for its governmental and other purposes, and it became and has ever since continued to be the successor of the Kingdom of Spain with respect to all of the rights, privileges and advantages conferred upon and secured and reserved to said Kingdom under the terms of each and every of the grants and concessions hereinbefore referred to, to wit, those referred to herein as Scehdules A, B and C.

XVIII. Among other benefits and advantages derived and enjoyed by the United States of America from the aforesaid cable lines
10 constructed by the Claimant under the grants and concessions hereinbefore set forth, and received by it from the Claimant are the following:

(*a*) The Claimant has, from December 10, 1898, until December 1908, transmitted, free of charge, through its cable from the Island of Luzon to Hongkong, and since that time at quarter rate, the official correspondence of the United States of America, and has continuously afforded to it the right of priority of transmission of such official correspondence through the said cable.

(*b*) The Claimant has also, ever since said date, transmitted the official messages of the United States of America over the Visayas Cables at half of the rates charged for private dispatches, and has at all times afforded them preference.

(*c*) The Claimant has also, ever since said 10th day of December, 1898, paid to the United States of America, in every year during which the income exceeded the expenses, a tax of ten per cent upon its local receipts for cablegrams transmitted over the Visayas Cables constructed by the Claimant under the grant and concession of April 14 1897, after first deducting the amount of the expenses for the maintenance of the stations operated by the Claimant on the Visayas Islands, such expenses not exceeding £6,000 per annum.

(*d*) The Claimant has likewise, ever since December 10, 1898 paid to the United States of America a sur-tax of five centimes of a franc per word on all telegrams transiting between the Islands of Luzon, Panay, Negros and Zebu, and the other islands of the
11 archipelago known as the Philippine Islands.

(*e*) For a considerable period of time after the cession by the Kingdom of Spain to the United States of America of the Philippine Islands, insurrections of the inhabitants of a number of the aforesaid islands were in progress, and it became necessary for the United States of America, in its efforts to suppress such insurrections and uprisings, to make constant use of the aforesaid submarine cables connecting the Islands of Luzon, Panay, Negros and Zebu, and the United States of America was thereby facilitated in effectively governing the said archipelago and the inhabitants thereof, and in restoring and maintaining peace and order therein.

(*f*) After the United States of America entered into occupation of the Philippine Islands, the Claimant, by arrangement with the duly authorized officers of the United States of America, extended the Visayas Cables direct to the capitals of the Islands of Panay and Zebu, expending for such extension the sum of about £38,000, and thereby greatly improved the service between Luzon and the Visayas Islands.

XIX. Down to January 1, 1905, the value of the telegraphic correspondence of the United States of America to the Philippine Islands

passing over the Hongkong-Manila cable of the Claimant, at the full rates charged for telegrams passing between Manila and Hongkong, amounted to £31,712:10:6. That sum had accumulated with the Claimant and was credited to the United States of America. Prior
to January 1, 1905, the Claimant had rendered annual ac-
12 counts to the United States of America showing the amount
owing to it by the Claimant for the free transmission of cablegrams of the United States of America over such lines, and deducting therefrom the annual subsidy of £4,500 sterling payable to the Claimant under the terms of Article 10 of the aforesaid grant and concession herein referred to as Schedule B. The amount of the several instalments of subsidy which had accrued on December 31, 1904, was £27,000, and after deducting that sum from the amount credited by the Claimant to the United States of America as the value of the free transmission of cables as aforesaid, there remained owing to the United States of America by the Claimant the sum of £4,712:10:6. In August, 1905, at the request of the United States of America, the said balance was duly paid to it by the Claimant, and accepted and received by the United States of America in satisfaction thereof.

XX. By reason of the premises the United States of America assumed and adopted all of the obligations and the performance of all of the conditions accepted by the Kingdom of Spain and agreed to by it according to the terms of the aforesaid concessions Schedules A and B, and of each of them, and agreed with the Claimant to perform the several covenants and agreements and to fulfill the conditions set forth in the several concessions aforesaid and accepted and agreed to by the Kingdom of Spain, and the United States of America, by the acceptance and enjoyment of the aforesaid benefits and advantages derived from the use of the cables constructed by the Claimant as aforesaid, agreed to pay the aforesaid annual subsidy
of £4,500 sterling as required by the terms of Article 10 of the
13 aforesaid concession hereinbefore referred to as Schedule B.

XXI. The United States of America has nevertheless failed to perform the said agreements and to fulfill the said conditions, in that it has failed and refused, although often thereunto requested, to pay to the Claimant the aforesaid annual subsidy of £4,500 sterling for the years 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913 and 1914, and for the six months ending on June 30, 1915, and for each of said periods, and by reason of the premises and of such failure and refusal to pay, it has become indebted to the Claimant in the sum of £4,500 sterling for each of the said years, with interest on each of said annual instalments at the rate of six per cent per annum from the 31st day of December of the year in which the same became payable.

XXII. The equivalent in legal tender of the United States of America, of a pound sterling, during all of the said period, was and still is the sum of $4.86-1/2.

Wherefore, the Claimant demands judgment against the United States of America.

First. For the sum of $229,871.25, with interest at the rate of six per cent per annum, on $21,892.50 from December 31, 1905, on $21,892.50 from December 31, 1906, on $21,892.50 from December 31, 1907, on $21,892.50 from December 31, 1908, on $21,892.50 from December 31, 1909, on $21,892.50 from December 31, 1910, on $21,892.50 from December 31, 1911, on $21,892.50 from December 31, 1912, on $21,892.50 from December 31, 1913, on $21,892.50 from December 31, 1914, and on $10,946.25 from June 30, 1915.

14 Second. For such other and further relief in the premises as to the Court shall seem just, together with costs.

GUGGENHEIMER, UNTERMYER & MARSHALL,
Attorneys for Claimant, 37 Wall Street, New York City.

SAM'L UNTERMYER,
LOUIS MARSHALL,
Of Counsel.

UNITED STATES OF AMERICA,
Southern District of New York,
County of New York, ss:

Louis Marshall, being duly sworn, deposes and says:
I am an attorney and a member of the law firm of Guggenheimer, Untermyer & Marshall of No. 37 Wall Street, in the Borough of Manhattan, City of New York, and as such attorney I have been and am duly authorized by The Eastern Extension, Australasia and China Telegraph Company, Limited, to prosecute the claim set forth in the foregoing amended petition, and to verify the same. I have read the said amended petition and know the contents thereof, and the same is true to the best of my knowledge, information and belief.

LOUIS MARSHALL.

Subscribed and sworn to before me this 30th day of September, 1915.

[NOTARIAL SEAL.] EDWARD M. NEARY,
Notary Public, Kings Co.
Certificate Filed in New York Co.

15 *Schedule A.*

The Spanish Government to the Eastern Extension, Australasia and China Telegraph Company, Limited, Concession for the Establishment and Working of a Submarine Telegraph Cable Between Luzon and Hong-Kong. Dated 22nd February, 1879.

16 Luis Gonzalez Martinez, Notary,

Montera, 31, Madrid.

No. 252.

In Madrid, the 6th of March, of the year 1879, I, Don Luis Gonzalez Martinez, Notary of this illustrious College, of the Colonial Ministry, &c., resident of this capital, proceeded to the said Ministry of the Colonies, there being present in the office of Ministry H. E. Senor Don José Elduayen y Gorriti, Marquis del Pazo de la Merced, Minister of the Colonies, Deputy to Congress, married, proprietor, of this city, who appears in this instrument in representation of the State. He does not produce his certificate of identity, being exonerated on account of the office he holds, in accordance with the provisions of the Royal Warrant of the 23rd March, 1875, and Mr. William Warden Morice, 47 years of age, bachelor, proprietor, a resident of London, at present sojourning in this capital, at the Hotel de Paris, No. 54, who presents and exhibits his passport, delivered in London by the Secretary of State, on the 27th of November last, bearing the Number 6,653, registered at the Spanish Consulate, in the said City of London, on the following day under the number 491.

This gentlemen appears in the capacity of attorney for the Telegraph Construction and Maintenance Company, and for the Submarine Telegraph Cable Company, called the "Eastern Extension," the representation of which Companies he establishes by the production of a Power of Attorney from them, dated in London, on the 3d of February last, in the presence of the notary, William Webb Venn, the which, presented at the office of interpretation of languages for the purpose of being translated, legalised at the Ministry of State, and furnished with the corresponding stamp, has been brought to me in order that I may testify to it, and join it to this instrument, and insert it in the copies thereof, and the Power of Attorney literally says the following:

17 Know all men by these presents that the Telegraph Construction and Maintenance Company, Limited, whose officers are at 38, Old Broad Street, in the City of London, and the Eastern Extension, Australasia and China Telegraph Company, Limited, whose offices are at No. 66, Old Broad Street, in the said City, do hereby constitute and appoint William Warden Morice, Esquire, who is about to proceed to Madrid, the agent and attorney of the said Companies, and each of them, for the special purpose of negotiating

with the Government of His Majesty the King of Spain the terms of a concession to the said Companies for establishing a Submarine Telegraph Cable between Hongkong and the Island of Luzon, with power for the said attorney and agent to accept such concession on behalf of the said Company, and to lodge the caution money in respect thereof, and to do all other necessary acts in relation thereto. And whatsoever the said attorney and agent shall lawfully do in accordance with these presents the Companies agree to ratify and confirm.

In Witness whereof the said Companies have hereunto caused their respective corporate seals to be affixed the 3rd day of February, 1879.

The common seal of the Eastern Extension Australasia and China Telegraph Company Limited was hereunto affixed in the presence of

JAMES ANDERSON, [L. S.]
Director.

F. E. HESSE,
Secretary.

The common seal of the Telegraph Construction and Maintenance Company Limited was hereunto affixed in the presence of

GEO. HENRY RICHARDS, [L. S.]
Director.

W. SHUTER,
Secretary.

I, William Webb Venn, junior, of the City of London, Notary Public by Royal authority, duly admitted and sworn, undersigned, do hereby certify and attest unto all whom it may concern, that I attended at the offices of the Telegraph Construction and Maintenance Company Limited, and also at the offices of the Eastern Extension, Australasia and China Telegraph Company, Limited, and did 18 see the common seals of the respective Companies duly affixed at foot of the foregoing Power of Attorney, in the presence of Sir James Anderson, Director, and Frederick Edward Hesse, Secretary to the Eastern Extension, Australasia and China Telegraph Company Limited, and Vice-Admiral Sir George Henry Richards, C. B., Director, and William Shuter, Secretary, of the Telegraph Construction and Maintenance Company Limited, who have all subscribed their signatures opposite to the respective seals of the said Companies; so that full faith and credit may and ought to be given to the said common seals and signatures in Courts of Judicature and thereout.

In testimony whereof I have hereunto set my hand and affixed my said official seal to serve and avail where needful. London, this 4th day of February, in the year 1879.

Quod Attesto,

[L. S.] W. W. VENN, JUN.

Seen for the legalisation of the preceding signature and seal, which are those used by Mr. William W. Venn, Junior, Notary Public of this City, whom I know, and to whom I give entire credence.

London, 4th February, 1879.

For the Consul General, The Vice Consul,

[L. S.] (Signed) T. AVENDANO.

No. 45.
Fees 8/9.
Art. 133.
Regd. fol. 10. No. 128 of 1879.

No. 233.

Seen in this Ministry of State to Legalise the signature of D. Teodonino Avendano, Spanish Consul in London.

Madrid, 4th March, 1879.

The Sub-Secretary,

[L. S.] (Signed) RAFAEL FERRAZ.

I, the Chief Clerk of the Translation Department of the Ministry of State, certify that the foregoing is a true an- literal translation of a Power of Attorney, drawn up in the English language, which has been brought to me for translation.

Madrid, 1st March, 1879.

(Signed) MANUEL DE LABRA.

19 This corresponds with the original, which I return, duly marked, to the holder, and at his request I deliver these presents on three sheets of the stamp No. 10, bearing the numbers 437,-717 to '18, in Madrid, on the 5th March, 1879.

(Signed) LUIS GONZALEZ MARTINEEZ.

Corresponds with the original to which I refer, Mr. Warden Morice affirming that the said power has not been revoked nor limited.

I know and recognise the parties to this contract by their names and other circumstances, the passport of the second party being also put in, to which I refer. The parties declare themselves to be in full exercise of their rights, nothing to the contrary being known to me; wherefore, with the full legal capacity for the execution of the present deed of contract for the establishment and working of a Submarine Telegraphic Cable between the Coast of China (Hongkong), and the Island of Luzon, and in the manner and form most binding in law, in the positions in which they stand, they adduce the following facts:

First. That by the Royal Decree of the 14th December, 1878, published in the Madrid Gazette of the following day, having heard the opinion of the Colonial Department of the Council of State,

and in accordance with the decision of the Council of Ministers, H. E. the Minister for the Colonies is authorised to make a contract, open to public competition, for the establishment and working of a Submarine Telegraphic Cable between the Coast of China (Hongkong) and the Island of Luzon, Cape Bojeador or Cape Bolinao, in conformity with the schedule of conditions approved on the same date, fixing the period of 60 days, counted from the date of the publication of the said Decree, for the presentation of proposals in sealed envelopes, up to the hour of 12 o'clock of the night of the day on which the said period expires, the Notary who attends being required to give testimony of the tenders handed in up to the said hour, each tender being accompanied by a receipt from the Receptorate General of Deposits, establishing the fact of a deposit having been made of the sum of $10,000, or the equivalent thereof in public securities, at the published quotations, the period for the holding of the public competition being fixed for the
20 day following that of the expiration of the term prescribed for receiving the tenders, the heads of departments of the said Ministry being assembled, with the assistance of the Notary, in the offices of the Ministry, to open and read the tenders, drawing up and signing the necessary document to which will be attached the aforesaid tenders, which will be submitted by H. E. the Minister for the Colonies, with his opinion, to the Council of Ministers for their resolution, and for the election of the proposal which may be considered to be most beneficial to the State, chiefly with respect to the subvention, either as regards the diminution of the monthly sums payable to the Concessionary, or the reduction of the number of years stipulated in the 11th Article of the schedule of conditions; which resolution shall be published in the Gazette, together with the minutes of the proceedings, it being obligatory on the person to whom the contract is assigned to increase the amount of his deposit, within the period of the following 15 days, to the extent of double the original sum, as a guarantee to respond for the inauguration of the Cable line within the time specified, and to enter into the corresponding contract, and to lose the first deposit if he does not comply with these conditions in the time specified, all which is stated with more detail in the aforesaid Royal Decree.

Second. That at 11 o'clock at night on the 13th February last, the undersigned Notary proceeded to the Colonial Office for the purpose of drawing up a minute of the result of the presentation of tenders for the aforesaid competition, there being presented, up to the hour of 12 o'clock at night, three closed and sealed papers, which were numbered in the order of their delivery, obtaining the first number that of Don Juan S. Perez, the second that of Mr. William Warden Morice, and the third that of Don José Zapatero, and after having been marked, they were deposited in a box, which was closed and left in the Subsecretariat.

Third. That on the following day the present Notary proceeded to the Colonial Office where were assembled the heads of de-
21 partments of the Ministry, and the Minister having arrived before 12 o'clock of the day, the Committee for conducting

the competition aforesaid remained constituted. The clock having struck 12, the proceedings commenced with the presentation of the tenders and the reading of the minute drawn up to certify their delivery. All the details of the proceedings being given in the account which was drawn up, and which are not repeated here as they are copied verbatim in another place.

Fourth. This being the state of the case, Mr. Warden Morice, by letter addressed to H. E. the Minister for the Colonies, under date 21st February last, in addition to that which is stated in his tender, bound his constituents to concede to the Government gratuitous and preferential transmission by Cable of the official despatches during the forty years of the duration of the exclusive privilege.

Fifth. That by Royal Warrant of the 22nd February last, published in the Gazette of the 1st instant, H. M. the King (whom God preserve) on the recommendation of the Minister for the Colonies, and with the concurrence of the Council of Ministers, has been pleased to command that the concession of the establishment and working of the Submarine Cable between the Island of Luzon and Hongkong be granted to Mr. William Warden Morice, representing the Telegraph Construction and Maintenance and the Eastern Extension Companies, under the conditions contained in the schedule approved on the 14th December last, and subject to the modifications which he has offered on behalf of the said Companies, at the time of the competition for the contract, and subsequently.

Sixth. That, consequent on the aforesaid adjudication, the Companies contracting have deposited $20,000 as a guarantee to respond for the inauguration of the line and other details.

The Royal Decree of the 14th December last, the schedule of conditions, Royal Warrant for the adjudication of the contract, minute of the result of the competition (published in the
22 Government Gazette of the 1st instant), letter addressed by Mr. Warden Morice to H. E. the Minister for the Colonies, and the receipt of the deposit hereinbefore mentioned, copied verbatim, state the following:

Royal Decree of the 14th December, 1878.

In view of the reasons given by the Minister for the Colonies, and of the opinion of the Colonial Department of the Council of State, and with the concurrence of the Council of Ministers, I decree the following:

Article 1. The Minister for the Colonies is authorized to submit to public competition, on the basis of the schedule of conditions approved on this date, a contract for the establishment and working of a Submarine Telegraph Cable between the West Coast of the Island of Luzon (Cape Bojeador or Cape Bolinao) and Hongkong, to place Manila in communication with the universal telegraph system.

Article 2. The persons who desire to tender for this work will send in their proposals to the Ministry of the Colonies, in sealed envelopes, within a period of 60 days, reckoned from that of the publication of this Decree in the Madrid Gazette, and before 12 o'clock at night of the day on which this term expires.

Article 3. Every proposal to be admitted to the competition must be accompanied by a document showing that a deposit of $10,000 (or the equivalent thereof in the bonds of the State, at the quotation of the previous day, or at the rate established by law) has been previously lodged at the General Deposit Bank.

Article 4. The Sub-secretary of the Ministry shall cause to be noted on the cover of each proposal the day of its receipt and the number corresponding, both of which annotations shall be recorded in a register opened for the purpose. Every person presenting a tender shall be furnished with a corresponding receipt.

After 12 o'clock at night of the last day of the term hereinbefore mentioned no tender shall be received. The Notary who attends to witness these proceedings shall give a certificate of the tenders presented up to the hour specified in the 2d Article of this Decree.

Article 5. If any person tendering should withdraw his tender after presenting it, he will incur the penalty of the forfeiture of the deposit specified in the 3d Article of this Decree.

Article 6. In the course of the competition which will take place at 12 o'clock of the day following the expiration of the
23 period specified for receiving tenders, and which will be held publicly, the Minister for the Colonies, together with the heads of departments of the same Ministry, in presence of the Notary appointed to witness the proceedings, will order the sealed covers to be opened and the contents to be read, and a minute to be drawn up, (which must be signed by all the persons present), reciting substantially the proposals made, and certifying that they were accompanied by the corresponding deposit receipts. Any proposals sent in without the deposit receipts will be regarded as not presented, and be immediately handed back to the authors.

The persons tendering may, in the course of the proceedings, with the President's sanction, give any explanations necessary for the better comprehension of their proposals, which explanations shall be inserted in the minute.

Article 7. The minute having been duly drawn up and signed, the tenders shall be attached to it, and the whole shall be submitted by the Minister for the Colonies, with his opinion, to the Council of Ministers, who will select the proposal most advantageous for the State, chiefly in relation with the subvention, either diminishing the monthly amounts to be received by the Concessionary, or making a reduction in the number of years during which it has to be paid, in conformity with the provisions of the 11th Article of the schedule of conditions.

The decision of the Council of Ministers will be published in the

Gazette, together with the minute of the proceedings of the competition.

Article 8. After the selection shall have been made by the Council of Ministers, all the receipts for the deposits made in accordance with Article 3 shall be returned to the persons whose tenders have been rejected.

The receipt corresponding to the proposal accepted shall be retained, in order that within a period of 15 days the tenderer may increase the deposit to double the original sum, as a guarantee that the Cable line will be inaugurated within the stipulated time, and he shall also execute a deed of contract, forfeiting the first deposit if he does not comply with these conditions within the time mentioned.

Article 9. The Minister for the Colonies is charged to carry out the provisions of this Decree.

Given at the Palace on the 14th December, 1878.

(Signed) ALFONSO.

(Countersigned) JOSE ELDUAYEN,
Minister for the Colonies.

24 *Schedule of Conditions for the Laying and Working of a Submarine Telegraph Cable Between the Western Coast of the Island of Luzon and Hongkong.*

Article 1. The Contractor undertakes to lay and work for his account a Submarine Telegraph Cable between the Western Coast of Luzon (Cape Bojeador or Cape Bolinao) and Hongkong, which shall connect Manila with Hongkong and with the general telegraph system. The distance between Cape Bojeador and Hongkong, taken at sea level, is about 430 miles, and from Cape Bolinao to Hongkong 475 miles.

Article 2. The Cable shall be made fast at the point of the above-mentioned coast which the Contractor may consider most suitable for the line and for the safety of the Cables. The Contractor shall submit for the approval of Government, the profiles, plans and surveys of the intended route, from the starting point to the landing place, within a year from the date of the final concession.

Article 3. The Cable shall consist of one conductor, formed of a strand of seven copper wires, weighing at least 107 lbs. English per nautical mile, and its electrical resistance after the Cable is laid (and allowing for the correction of the temperature to reduce it to 24 degrees centigrade) shall not exceed 13 ohms per nautical mile. This conductor shall be covered with a coating of Chatterton's composition, followed by three coatings of gutta percha alternated with coatings of the above-named composition; its insulating resistance after the Cables are laid, and allowing for the correction of the temperature to reduce it to 24 degrees centigrade, shall not be less than 200 megohms per nautical mile. The core shall be covered with servings

of hemp (steeped in a preservative composition) necessary to receive the sheathing corresponding to the different types of Cable to be employed.

The sheathing of the deep sea Cable shall consist of ten or twelve iron wires, six mil-imetres in diameter, laid spirally, and protected by two servings of hemp and coated with Clarke's composition. The sheathing of the shore end Cable may be either double or single at the option of the Contractor. In the event of its being double, it shall consist of fourteen iron wires, eight mil-imetres in diameter, laid spirally over the sheathing of the deep sea Cable. In the event of its being single, it shall consist of ten iron wires, ten mil-imeters in diameter, laid spirally. In both cases the sheathings shall be protected by two servings of hemp coated with Clarke's composition, as in the case of the deep sea Cable.

Article 4. In the neighborhood of the coasts the Cable shall be laid in the line of the currents by using two miles of shore end Cable, and then two miles of "intermediate" before joining on to the "deep sea" Type.

Article 5. The Contractor can adopt such system of apparatus as he may deem suitable for working the Cable, modifying or changing it as he thinks best, but he shall always keep at the principle station the following testing instruments: one Thomson's reflecting galvanometer with all its adjuncts, one Wheatstone's bridge with resistance coils up to 10,000 ohms, one condenser of a third of a farad, one Thomson's receiving syphon of the newest type, with the local battery, and the tools necessary for splicing Cables.

Article 6. The receiving and transmitting station for the working of the Cable shall be situated in that office of the State which the Government shall deem most suitable for the purpose, the Contractor paying a fair proportion of rent corresponding to the increase of the premises required for the establishment of the new station, and the branch telegraph line which is to connect the end of the Cable with the nearest station of the State shall be constructed at his expense.

Article 7. The materials required for the construction on Spanish territory of the æerial line, which is to connect the Cable with the station above-mentioned, as well as the apparatus and other instruments, shall be considered as items of a public work, and as such shall enjoy the immunities conceded by the existing laws.

Article 8. The telegraphists and other persons employed in the working of the Cable shall be chosen by the Contractor, but subject in the exercise of their duties to the provisions contained in the telegraph regulations of the islands. In addition to this, the Government reserves to itself the right of organising, in connection with the Cable, such a system of supervision as may be most in accordance with the present administrative regulations. Consequently telegrams received and presented for transmission, shall be handed over to the officials of the State, who will act as intermediaries between the public and the Contractor's agents.

Article 9. The Government may establish, wherever it deems it expedient, the aerial and submarine telegraph lines in the
26 Philippine Islands which are necessary for the Government and public service of the said provinces.

Article 10. Telegrams passing through the Cable shall be delivered at the station mentioned in the 6th Article hereof, for the necessary purposes, so long as the requirements of the service do not call for a change of the delivery station.

Article 11. The Government will pay to the Concessionary of the Luzon-Hongkong Cable a monthly subsidy of $4,000 for a period of 10 years, reckoned from the date of transmission over the submarine Cable of the first despatch, so long as the Cables are in good working order, for which effect the Concessionary will be required to produce a certificate from the Inspector to be named by Government. The above-mentioned subsidy shall be paid monthly by the Manilla Treasury, one-third by the Treasury, and the remaining two-thirds by the local funds, as provided in similar cases. If, during the working of the Cable, it should cease to transmit messages, the Government will not pay the subsidy so long as the interruption lasts; but if it be repaired within the space of one year, the period of interruption shall not be taken into account in the calculation of the subsidy in question.

Article 12. The Concessionary shall enjoy an exclusive privilege for 40 years, during which period it shall not be lawful for the Government to grant the right of laying any other Cable between the points mentioned in this Concession. The Government reserves to itself the right of suspending the transmission of messages over the Cable, if they should appear dangerous to the security of the State, in conformity with the stipulation of the last International Telegraph Convention, the regulations of which shall apply to this telegraph route so long as they do not clash with the clauses of this concession.

Article 13. The Cable must be laid and working in good electrical condition within the term of two years, reckoned from the date of the definitive concession. If it should not be so laid, or, if through causes under the control of the Contractor, it should prove useless for the service within the term above-mentioned, the concession shall be null and void, and the deposit shall be forfeited. On proof being given that the suspension of working has been brought about by the breaking of the Cable, or by unforeseen accidents in the laying, the above-mentioned term shall be extended by one year. In the event of the conductors becoming useless, even from causes beyond
27 the control of the Contractor, during the period of the concession, he shall be bound to replace them so that communication may be restored within a period not exceeding one year. In default of this being done within that time, the concession shall be considered null and void.

Article 14. The Contractor shall admit on board the ship carrying the Cable the Commissioner or Commissioners of the Government, to superintend the operations of laying, landing and reception of the Cable.

Article 15. Whenever the working of the line may be interrupted, totally or partially, for more than one month, in consequence of accidents or disputes between the Company and its servants, or from any cause attributable to the negligence, bad management, or want of organization of the undertaking, the Government shall have power to take charge of the Cable and to receive the sums accruing from the working, which shall be handed over to the Company at the proper time, after deducting the expenses of the official administration, and those of maintenance, repairs, and of any modification or change of apparatus which may have been necessary. This concession shall be considered lapsed if the period of interruption of the working shall exceed one year, reckoned from the official notification given to the Company; the apparatus and other serviceable materials becoming the property of the Government, as some compensation for the prejudice caused to the country by the total interruption of the service.

Article 16. The official correspondence of the Government shall enjoy the privilege of priority and free transmission over the Cable, in conformity with the telegraphic service regulations now in force in the Philippine Islands, during the term of the subsidy; at the expiration of which it shall enjoy priority and be paid for at one-half the established tariff rates.

Article 17. The Contractor may fix the tariff according to which telegrams sent over the Cable are to be charged, but the highest rates shall not exceed those of other Submarine Telegraph Companies, whose Cables are in analogous conditions. In any case, telegraphic correspondence shall pay rates equal to those now charged by the Spanish Administration, in conformity with the tariffs in force on telegrams forwarded, received, and in transit. Should any modifications be introduced in the said tariffs, the Contractor will have to make a similar alteration with respect to the amounts to be levied on account of the Spanish Administration.

28 Article 18. The accounts shall be kept by both parties as may be mutually agreed, conforming, as far as possible, to the existing international regulations. Consequently, the St. Petersburg Convention or any other convention made in modification thereof, provided that Spain be a party thereto, and that it be not in opposition to the clauses of this concession, shall be considered to be the basis of this arrangement. The said conventions shall also regulate the international service.

Article 19. The Contractor shall appoint duly authorized representatives in Madrid and Manilla, to intervene in all matters or disputes which may arise between the Spanish Administration and the said Contractor. All such questions must be decided in the manner

prescribed by the existing regulations with respect to the interpretation and effects of Colonial public contracts.

Article 20. There shall be laid down, with the Company's concurrence, in a special regulation, everything relating to the international telegraphic tariffs which has to bear upon the transmission by the Company of private telegrams and other details of the working of the Cable, and the same regulation shall make provision for the guarantee which the Company will be required to give for the recovery of the proportion of the price of the telegraphic despatches which belongs to the Government lines.

Article 21. On the adjudication of the contract a corresponding deed will be executed, the cost of which, of the two copies thereof for the Colonial Office, shall be defrayed by the Concessionary.

Article 22. Neglect on the part of the Concessionary to comply with any one of the clauses of this concession shall be deemed sufficient to nullify it.

Article 23. Proposals must be drawn up in the form following:—The undersigned undertakes to lay within two years, and to work, a Submarine Telegraph Cable from Manilla to Hongkong, in connection with the general telegraph system, upon the conditions approved on (date), and published in the Gazette of Madrid on the (date), in consideration of a monthly subsidy of (amount of subsidy), to be paid by the Government for the term of (number of years).

Madrid, 14th December, 1878.

Approved by His Majesty.

ELDUAYEN.

29 *Mr. Warden Morice's Letter.*

Madrid, 21st February, 1879.

H. E. Minister the Colonies, Madrid.

SIR:

On the 14th instant I had the honour to present to your Excellency a proposal of the Telegraph Construction and Maintenance Company, and of the Company which owns and works the great Submarine Telegraph Lines of the Indies, China and Austral-ia, relative to the laying and working of a telegraphic Cable between Hongkong and the Island of Luzon.

I was anxious to include in my proposal a very important concession in favour of the State, viz., that of the absolute freedom from charge of all official messages during the forty years of the concession, and I had already written to London in that sense, but owing to the difficulty of getting together the Boards of the two Companies, and submitting my indication for their approval, it was only this morning that I received a telegram sanctioning my suggestion.

Although the last article of the Royal Decree of the 14th December stipulates that the Council of Ministers will select the proposal

which they consider most advantageous to the State, having regard chiefly to the question of the subvention, your Excellency will readily perceive that the concession which I have now the honour to offer, surpasses by a great deal an insignificant diminution of the monthly sum payable to the Concessionary, or a slight reduction of the number of years mentioned in the 11th Article of the schedule of conditions.

My present offer being therefore highly advantageous to the State, and it being in evidence that I have already undertaken, in the name of the Companies which I represent, to establish the telegraphic communication in eighteen months, and considering, moreover, the high position of the Companies, and the undoubted guarantee which they offer in connection with the laying and working of the projected Cable, I trust that your Excellency, consulting the best interests of the valuable Colony of the Philippines, will sanction the amendments of my tender in the sense indicated; the 16th Article of the schedule of conditions being altered therefore to the following form:—

Article 16. The official correspondence of the Government will be transmitted free of charge through the Cable, and with right of priority, during the 40 years of the concession.

(Signed) W. WARDEN MORICE.

30 *Royal Warrant of Adjudication.*

The Director General of Grace and Justice, Administration and Public Works:

With reference to the public competition held on the 14th inst. for the adjudication of a contract for laying and working a Submarine Telegraphic Cable between the Island of Luzon and Hongkong pursuant to the authority granted by Royal Decree, dated the 14th of December of last year, and in accordance with the schedule of conditions approved on the same day:

Considering that at the said competition the conditions and formalities prescribed in the said Royal Decree have been duly observed:

Having seen the official report on the said public competition which is transcribed in continuation hereof:

Having seen the three tenders made, the first by Don Juan S. Perez, in which he offers to accept a reduction of the subsidy for a term of 12 months; the second by Mr. William Warden Morice, as representative of the Telegraph Construction and Maintenance Company, and the Eastern Extension, Austral-ia and China Company, in which, although no reduction is made in the subsidy, he proposes to construct and lay the Cable within a term of 18 months, handing in a written statement and a plan, showing that the said Companies have constructed and laid 50,000 miles of Cable, including the Cables to which the projected line will be joined, and the third by Don José Zapatero, proposing a reduction of the subsidy for the term of 14 months, which, however, is accompanied by a note which must be considered as forming part of the tender, and in which the acceptance

of the conditions is made dependent upon the greater or lesser depth of the seas in which the Cable has to be laid:

Having seen the official letter of Mr. William Warden Morice, in which he states that in the event of the concession being given to the Companies represented by him, they will undertake to allow the transmission of the official correspondence of the Government over the Cable, gratuitously, and with right of priority, for the term of the 40 years of the duration of the privilege mentioned in the 12th Article of the schedule of conditions:

Considering that the explanatory note presented by Don José Zapatero nullifies his tender, since it leaves in suspense the observance of the general conditions, the tenderer not engaging to be bound by the same:

31 Considering that although the reduction proposed by Don Juan S. Perez would effect a saving of $48,000., yet, on the other hand, it must be borne in mind that the Government's right to the free transmission of its official correspondence is limited to the term of a subsidy, after which half rates will be charged, reducing the said term to 9 years, on the 10th year half the tariff charges would be levied, and consequently it is necessary to deduct from the above mentioned sum of $48,000. the total amount to be paid on that account:

Considering that in the tender signed by William Warden Morice on behalf of the above-mentioned Companies, although he makes no reduction in the subsidy, yet he offers to complete the construction and to have the Cable laid in 6 months less than the time stip-lated in the schedule of conditions, a circumstance worthy of the consideration of His Majesty's Government, which desires to see the Philippine Archipelago connected as soon as possible with the general telegraph system:

Considering that the offer of the Companies represented by Mr. Morice to convey the official correspondence of the Government free of charge over the Cable, for the period of the 40 years of the duration of the privilege, is more advantageous to the State than the surrender of one year's subsidy offered by Don Juan S. Perez:

Considering that the proposal of the said Companies, besides being more advantageous than that of Don Juan S. Perez, from an economical point of view, is so also in view of the guarantees afforded by their well known experience in constructing and laying Submarine Telegraph Cables:

And, lastly, considering that the circumstance of the said Companies being possessors of the Submarine Telegraph lines to which the projected Cable is to be joined, will facilitate the rapid transmission of the correspondence and the surveillance of the new Cable, and at the same time afford the advantage of uniformity of tariffs.

For these reasons—

His Majesty the King (whom God preserve) at the instance of the Minister for the Colonies, and with the concurrence of the Council of Ministers, has been pleased to order that the concession for the establishment and working of the Submarine Cable between the Island of Luzon and Hongkong, be granted to Mr. William Warden Morice as representative of the Telegraph Construction and Maintenance

Company and the Eastern Extension, Australasia, and China Company, under the conditions contained in the schedule approved on the 14th of December last, and subject to the modifications which
32 he has offered on behalf of the said Companies, at the time of the competition for the contract, and subsequently.

All which, by Royal Order, I communicate to you for the necessary purposes, and in order that you may direct the return of the vouchers for the deposits made in conformity with the 3d Article of the Royal Decree, dated 14th December last, to the persons whose tenders have not been accepted, retaining that which corresponds to the tender accepted, the author of which will be required to double the amount of said deposit, as a security that the Cable will be in working order within the time prescribed, and to execute the requisite deed of contract in pursuance of the provisions of the 8th Article of said Royal Decree.

God preserve you many years.

Madrid, 22d February, 1879.

ELDUAYEN.

Minute of the Result of the Competition.

Madrid, 14th February, 1879.

No. 168.

I, Don Luiz Gonzalez Martinez, Notary of the Illustrious College of Madrid, and of the Colonial Office &c., in compliance with instructions, attended at 11 o'clock of the morning of this day, at the said Ministry of the Colonies, where had met the Excellent and Illustrious Don Francisco Aubio y Pablos, Under-Secretary of the Colonial Office, the Illustrious Don Angel Maria Decarrete y Hernandez, Director General of Finance, the Illustrious Don Enrique Cisneros, Director General of Grace and Justice, Administration and Public Works, and Don Francisco de Asis Luceno Bulgarini, Chief of the Telegraph Department.

Before 12 o'clock noon His Excellency Don José Elduayen y Gorriti, Marquis del Pazo de la Merced, Minister of the Colonies, arrived, and the Board was constituted for the purpose of adjudicating the contract open to public competition for the establishment and working of a Submarine Telegraph Cable between the Coast of China (Hongkong) and the Island of Luzon (Cape Bogeador or Bolinao) in conformity with the schedule of conditions approved by his majesty on the 14th December, 1878, and published in the Gazette of Madrid of the following day. His Excellency, the said Minister presided.

At 12 o'clock the Under-Secretary produced the only three
33 tenders sent in, closed and sealed, and which had been deposited up to 12 o'clock of the previous night. The same were numbered according to the order in which they were presented, the names of the persons tendering, and the time of the presentation of their tenders, having been noted in a register prepared for the purpose.

In pursuance of the stipulation of the 4th Article of the Royal Decree of the 14th of December last, the undersigned Notary made a minute, at 12 o'clock last night, of the delivery of the three mentioned sealed packets with the names and the time of delivery.

The public were invited to ascertain that the packets were in the same condition as when presented, but no observation was made.

Subsequently the President ordered me to read the official notice of the competition, the Royal Decree sanctioning the same, and the schedule of conditions; and this having been done, his Excellency intimated that any one desirous of giving any explanation would have an opportunity of doing so before the close of the proceedings.

And I, the undersigned Notary, did open the said packets, which were accompanied respectively by vouchers from the General Deposit Bank, showing that the requisite caution money had been properly deposited in advance, and the following is the tenour of each tender in accordance with the order in which the were presented.

Tenders.

No. 1.

The undersigned undertakes to lay within a term of two years, and to work a Submarine Telegraph Cable, from Manila to Hongkong, which shall be connected with the general telegraphic system, in accordance with the conditions approved on the 14th of December, 1878, and published in the Madrid Gazette of the 15th day of said month and year, in consideration of a monthly subsidy of $4,000, which he shall receive from the Government for a term of nine years.

The undersigned accepts all the conditions contained in the schedule above referred to, and undertakes to introduce, with the concurrence of His Majesty's Government, all such improvements in the construction and laying of the Cable as may be requisite in the interest of the public service, and all others which may hereafter come to light as the result of the latest advancement and discoveries of science.

JUAN S. PEREZ.

No. 2.

MADRID, 13th February, 1879.

The undersigned undertakes to lay within a term of 18 months, and to work a submarine Telegraph Cable from Manila to Hongkong, which shall be connected with the general telegraphic system in accordance with the conditions approved on the 14th of December, 1878, and published in the Madrid Gazette of the 15th day of said month and year, in consideration of a monthly subsidy of $4,000, which he shall receive from the Government for a term of 10 years.

WILLIAM WARDEN MORICE,

Attorney of the Construction and Maintenance Submarine Cables Company and of the Submarine Telegraph Company, Called the Eastern Extension, Both of Old Broad Street, London.

No. 3.

The undersigned undertakes to lay within a term of two years, and to work a Submarine Telegraph Cable from Manila to Hongkong, which shall be connected with the general telegraph system, in accordance with the conditions approved on the 14th of December, 1878, and published in the Madrid Gazette of the 15th day of said month and year, in consideration of a monthly subsidy of $4,000, which he shall receive from the Government for a term of eight years and ten months.

Madrid, 13th of February, 1879.

JOSE ZAPATERO.

Don José Zapatero requested the President to allow it to appear in the minute, as an explanatory addition to his tender, that in the case alluded to in the 2d Article of the schedule of conditions, if a depth of water should be found so great as not to allow of the Cable being laid in accordance with the conditions laid down in the schedule, the Concessionary shall be at liberty to modify the condition in conformity with the depth to which the Cable must be submerged, but so as not to interfere with the working of the Cable, submitting beforehand a plan for the approval of the Ministry, it being however, understood, that at the places where no such obstacle to the laying of the Cable is met with, the general conditions of the schedule shall remain in force.

Mr. William Warden Morice, jointly with his tender, handed in a written statement on stamped paper of the eleventh class, which is annexed to this minute, and will be filed in the Archives, the tenour whereof is as follows:

35 To His Excellency the Minister of the Colonies, Madrid.

SIR:

I, William Warden Morice, respectfully beg to state that I have come to this Court as representative of the Telegraph Construction and Maintenance Company, and of the Company which at present owns and works the Submarine Telegraph Cable, connecting China and the Indies with Europe, whose station is at Hongkong, to submit to His Majesty's Government a proposal for laying a Submarine Cable between Hongkong and the Island of Luzon, capital of the wealthy and flourishing dependency of the Philippine Islands.

The Construction Company, as your Excellency may see in the accompanying map, has already manufactured and laid about 20,000 leagues of telegraph Cable, and the Eastern Extension Company has been working, since the year 1871, the telegraph system between China and England. These two powerful and well-known Companies, joining together in undertaking the contract about to be adjudicated, offer to His Majesty's Government a double guarantee—that of the Construction Company, which in the immense works executed and undertaken since 1854 has never failed, even to the extent

of an hour, to fulfil its engagements, and that of the Company which has under its direction, not only the line to the Indies and China, but also the extension of the telegraph system to the Colonies of Australia and New Zealand, and over whose Cables all the messages transmitted from the Philippine Islands must pass. I venture to say that no other Company or person coming before your Excellency with the pretension of carrying out the important undertaking in question, can offer the same guarantees with regard to the construction and laying of the Cable, and the working and management thereof during the long time fixed for the duration of the privilege. I have been told that already, on two former occasions, this concession has been granted to persons who have been unable to comply with the responsibilities which they undertook, and consequently, up to this day, the valuable colony of the Philippines remains without direct communication with the mother country. It is true that the persons who have so failed in their engagements have had to suffer the consequences of their incautiousness, forfeiting to the State the sums deposited as guarantee for the fulfilment of the contracts, but your Excellency, better than any one, can judge how insignificant such a compensation has been, when compared with the inconvenience caused to the State, and the detriment to public and private interests, by the want of the much desired telegraphic com-
36 munication with the Oriental Colony of Spain. I must also remind your Excellency that the working of the Cable, when laid, offers many serious difficulties to a Company not possessing, as do ours, special steamers constantly employed in watching in those distant seas over the safety of the Cables, and in attending to their repair and maintenance; and I take the liberty of asking your Excellency what sacrifice of subsidy or deprivation of privilege imposed on the Contractors would compensate for a long interruption in the communication when once established? and what would not be the inconvenience to the public service and the mercantile community of a suspension in the working of the Cable for an indefinite period of time? Allow me to remind your Excellency that, in the year 1876, the Director of Telegraph of Manila, having been commissioned to ascertain the terms on which telegraphic communication between Luzon and Hongkong could be established, went to England and applied to the Companies which I have the honour to represent, and after a long and careful study of the details, the said Companies fixed a yearly subsidy of £10,000, and if they will not now consent to make any reduction of this subsidy, it is because their long experience in works of this kind convinces them that the subsidy demanded is nothing more than an equitable compensation for the risk attending a difficult and costly operation, and merely sufficient to yield a moderate interest on the capital required for the construction and submersion of the Cable.

For these reasons I trust that your Excellency, before the contract is assigned, will take into consideration, not only the question of the greater or lesser amount of subsidy which the State will have to pay to the Contractors, but also the very much more important points, such as the laying the Cable in the best possible manner and with the

least practicable delay, and the certainty of having the service conducted with the security and punctuality desirable.

I remain,

Your Excellency's obedient servant,

WILLIAM WARDEN MORICE.

All the foregoing are true copies of the originals, to which I refer, the same having been initialed by me; after which the President declared the proceedings closed. And for the necessary purposes I have drawn up this minute, which has been signed by their Excellencies and by the gentlemen tendering, the first of whom offered to produce his personal certificate of citizensbip, the second, Mr.
37 Zapatero, produced his, which had been granted on the 10th of October, 1878, under No. 1,018, by the Mayor of the district of Buenavista, and Mr. Morice, as a foreigner, produced his passport, delivered in London by the Secretary of State on the 28th of November last, under No. 6,653, and registered at the Spanish Consulate in London on the following day, under No. 491, which said documents have been returned by me to the said gentlemen.

And I, the undersigned Notary, do hereby testify to the correctness of the foregoing, to the delivery to me of the deposit receipts by the Chief of the Telegraph Department, and to the production of a map by the said Mr. Morice.

José Elduayen—Francisco Rubio—Angel Maria Dacarrette—Enrique de Cisneros—Francisco de A. Luceño—Juan S. Perez—William Warden Morice—José Zapatero.

(Signed) LUIS GONZALEZ MARTINEZ.

The foregoing agrees to the letter with the original, to which I refer, the same remaining annexed to my protocol of public deeds under No. 168.

And for the purposes and use of the Ministry for the Colonies I deliver these presents contained on five sheets of paper of the eleventh stamp, Nos. 436, 674 and from 76 to 79 inclusive, at Madrid, on the day of the date hereof.

LUIS GONZALEZ MARTINEZ.

There is a seal on which is written Luis Gonzalez Martinez, Notary, Madrid.

Form of Receipt.

Volume 127, No. 7.

General Deposit Bank, Central Office,

Deposit Paper—Obligatory.

Mr. William Warden Morice, Attorney for the Telegraph Construction and Maintenance and the Eastern Extension, Australasia and China Companies, in guarantee of the inauguration of a Telegraphic Submarine Cable between Hongkong and the Island of Luzon, which concession has been granted to him by Royal Warrant

of the 22nd February last, and at the disposal of the Directorate General of Peace and Justice, Administration and Public Works of the Ministry of the Colonies, has delivered, in deposit, two hundred bonds of the Bank and Treasury (external) representing a nominal value of 100,000 pesetas, and which will be refunded with
38 the corresponding formalities.

This receipt, which is numbered, must be registered in the Accountant's Department, without which registration it will have no force or value.

Madrid, 6th March, 1879, 100,000 pesetas.

The Treasurer,
(Signed) FRANCISCO PERALTA.

Noted
The Accountant,
(Signed) DAMIAN M. RAZON.

Receipt Number, 130,279.
Noted in the Treasury.
(Signed) ROMERO.

Register Number, 31,041.
Noted in Accountant's Department.
(Signed) PALMA.

At back: Class of Document 200, Bank and Treasury, Exterior Series, Nos. 119, 601/700, 208, 675/774. Date, 1st July, 1876. Coupons attached and their number, 38, amounts to, in pesetas, 100,000.

All the foregoing correspond verbatim with the originals which I return, inclusive of the letter addressed to the Minister of the Colonies, and to which I refer.

Therefore, with the object of giving all due formality to the corresponding deed of contract, the parties executing it agree to and subscribe the following conditions:

First. Mr. William Warden Morice, undertakes for the afore-mentioned Telegraph Construction and Maintenance, and Eastern Extension, Australasia and China Companies, the laying and working of the aforesaid Submarine Telegraphic Cable between the Coast of China (Hongkong) and the Island of Luzon (Cape Bogeador or Cape Bolinao), and binds the said Companies to the carrying out of this work, without any excuse or pretext, in conformity with all that which appears in the schedule of conditions, and in the letter copied in this instrument (which documents are taken to be here repeated), and with the modifications in favour of the State which the said William Warden Morice, on behalf of the said Companies, has offered; the said Companies being amenable, by all the force of the law, for the exact observance and fulfilment of the obligations
39 *in-* incurred.

Second. As security for the exact observance of the aforesaid obligation Mr. William Warden Morice, as Attorney for the Companies aforesaid, places at the disposal of the Colonial Office the amounts lodged in the General Deposit Bank, as specified in the antecedent receipt.

Third. His Excellency the Marquis Del Pazo de la Merced, in the capacity of Minister of the Colonies, promises and undertakes, in the name of the State, that all the rights secured to the said Telegraph Construction and Maintenance, and Eastern Extension, Australasia and China Companies, shall be faithfully respected, and that the said Companies shall receive that is due to them, so long as they shall comply with the obligations which they have undertaken.

Fourth. This Capital is appointed as the common domicile of the contracting parties for any proceeding or negociation which may arise out of this contract.

And in this form they execute this deed of contract, binding their respective constituents in all legal form to comply with all the obligations hereinbefore specified.

In corroboration of which they signed, in the presence of Don José Valcarcel y Crespo, and Don Gregorio Diaz Borregon, of this city, duly qualified as they declare, and with cognizance of the matter.

I, the Notary, proceed to make an exact recital of this deed, the contracting parties themselves declining to read it over, having been duly instructed of their rights in the matter, and I testify to all that is herein contained.

(Signed) JOSE ELDUAYEN.
WM. WARDEN MORICE.
JOSE VALCARCEL.
GREGORIO DIAZ.
LUIS GONZALEZ MARTINEZ.

I, Don Luis Gonzalez Martinez, Notary of this College, etcetera, do deliver this first copy on the day of the execution of the deed of contract, for the purpose of handing it to Mr. William Warden Morice, on one sheet, bearing the first stamp No. 8854, and twenty-one sheets of the eleventh, Nos. 1,687, 826 to 7,829/47, remaining noted in the collection with the number 252 of register.

(Signed) LUIS GONZALEZ MARTINEZ.

40 I hereby certify that the preceding signature purporting to be that of Don Luis Gonzalez Martinez, Public Notary of this Capital, and of the Ministry of the Colonies, is the true and correct handwriting of same, in faith of which I hereto affix my name and the seal of my office.

Madrid, 8th March, 1879.

(Signed) WM. McPHERSON,
[L. S.] *H. Ms'. Vice-Consul.*

LEGACION DE ESPAÑA EN LONDRES,

19th May, 1879.

To the Managing Director of the Telegraph Construction and Maintenance Company.

SIR:

I am instructed by the Spanish Government to forward to you the enclosed document concerning the laying down of a telegraphic Cable between Manila and Hongkong. I am further desired to call your attention to the advisability of your appointing a representative of the Company at Madrid, to correspond directly with the Government, as stated in clause 19th of the Conditions for the Tender.

I am, Sir,

Your obedient Servant,

(Signed) MARQUIS DE CASA LAIGLESIA.

**Translation from the Spanish of Document Mentioned as Enclosed.*

Office of the Colonial Minister.

His Majesty's Minister Plenipotentiary in London informs the Minister of State as follows:—

"With reference to the Royal Order of the 17th of October last, which your Excellency was pleased to communicate to me (sub. No. 324), I have the honor to forward to you herewith a copy and translation of note which I have received from Lord Salisbury, in answer to the one I sent him on the 14th November, informing me that his Government was disposed to concede to His Majesty's Government the authorization to lay down, at Hongkong, the projected Philippine Islands Telegraphic Cable. Nevertheless, the British Government's consent is made to depend on the concession on the part of Spain, of two privileges, viz., the usual one of priority of transmission of official telegrams, and the faculty on the part
41 of England of taking possession in case of emergency of the Station established in British territory on payment of a reasonable compensation."

The foregoing was, by Royal Order, communicated by the Colonial Minister, and I now communicate the same to you, Sir, in order that you may inform the Ministerial Office whether the Company which you represent agrees to accept the stipulated conditions on the part of the British Government, it being well understood that there is to be no derogation whatever with regard to the stipulations which served as a basis for the concession of such line, said stipulation being set forth in the Schedule of Conditions which was annexed to the

Royal Decree of the 14th of December, 1878, and to the Royal Order of the 22nd of February of the present year.

God preserve you many years.

Madrid, 15th of April, 1879.

The Sub-Secretary pro tem.,

E. DE CISNEROS.

To the Representative of the Telegraph Construction and Maintenance Company, London.

Translation.

Ministry of the Colonies. General Direction of Public Works, Telegraph Department.

His Excellency the Minister of the Colonies communicates to me the following:

The King, with the concurrence of the Council of State and of the Commission of the Telegraph Department, has been pleased to resolve as follows:

1. That the route adopted by the contracting Companies for the laying of the Cable, fixing the landing place at Cape Bolinao, and following the tracing marked on the map presented by the same in conformity with Article 2 of the Schedule of Conditions of the 14th December, 1878, is approved.

2. That the above-mentioned Companies are authorized to lay the Cable, the specification of which accompanies the petition of Mr. Morice, in the event of the surveys taken in those seas showing that there are greater depths than 600 fathoms.

3. That there are not sufficient reasons given to induce the Government to except the modifications proposed of Articles 11, 12, and 15 of the aforementioned Schedule of Conditions.

42 4. That it is understood that the following words are added at the end of Article 13:

Except it shall be proved that the delay was occasioned by force majeure or accident, and in that case, the period referred to shall be extended by one year.

I hand you this for your guidance, and God preserve you many years.

(Signed) DANIEL DE MARAZA,
Director-General.

Madrid, 26th January, 1880.

Mr. William Warden Morice, Representative of the Telegraph Construction and Maintenance and the Eastern Extension, Australasia and China Telegraph Companies.

Company's Rely to Preceding Letter.

Telegraph Construction and Maintenance Company, Limited,

Offices, 38, Old Broad Street,

LONDON, E. C., May 21st, 1879.

Excellency:

I have the honor to acknowledge the receipt of your letter of the 19th instant, enclosing a communication from his Excellency the Secretary of State for the Colonies at Madrid, with reference to the conditions with the British Government for allowing the landing of the Manila Cable at Hongkong.

I beg to state, on behalf of my Company, that we agree to be bound by the said conditions, namely:

That official messages of the British Government shall have priority of transmission at Hongkong, and that the British Government shall have the right, in case of emergency, to take possession of the Hongkong Station on payment of a reasonable sum.

I will thank you to inform His Excellency the Colonial Secretary, that my Company will forthwith appoint a representative at Madrid according to Article 19 of the Concession.

I have the honor to be

Your Excellency's obedient Servant,

(Signed) GEO. HENRY RICHARDS,
Vice-Admiral, Managing Director.

To His Excellency Marquis de Casa Laiglesia, &c., &c., Spanish Minister in London.

43 *Schedule B.*

The Spanish Government to the Eastern Extension, Australasia and China Telegraph Company, Limited—Concession for the Construction, Establishment and Working of Three Submarine Telegraph Cables, Luzon-Panay, Negros, and Zebu. Dated 14th April, 1897.

44 *Extract from the "Gaceta de Madrid." No.* 115, *Dated* 25*th April,* 1897. (*Official Part.*)

Ministry for the Colonies.

Statement of Motives.

MADAM:

The importance of submarine telegraph communication in the Philippine Archipelago, and the necessity of establishing it between the principal Visayas Islands, which object has not been realised, in

spite of the various "Concursos" held for the purpose, led your Majesty's Government to propose the announcement of a new "Concurso," for the construction and establishment of three Submarine Telegraph Cables between the Islands of Luzon, Panay, Negros and Zebu in those parts; and there was consequently published the Royal Decree of the 12th September last, which at the same time approved the general, technical and financial conditions the Concession of the said service had to subject itself to.

At the expiration of the term fixed for the said "Concurso," and within the same, two proposals were submitted for the construction and establishment of the Cables above mentioned—one for the construction and laying of the lines; and the other for their construction, establishment, working and maintenance for the period of twenty years.

The latter proposal being from the first deemed the more expedient for the interests of the State generally, and particularly for those of the service in question—both from the conditions of the cost of installation of the Cables and of the period offered for carrying it out, as well as from the offer to work the service at the expense and risk of the Company tendering—the Minister who has the honour of addressing your Majesty, agreeably to provision 3 of the General Conditions approved for the "Concurso," invited the author of the said proposal to improve it and completely adapt it to the conditions required for the case of the working of the lines as set forth in the approved Schedule.

In reply to this invitation the duly authorised representative of the Eastern Extension, Australasia and China Telegraph Company, Limited, who tendered for the construction and working of the said Cables, submitted a modification of the proposal before mentioned, improving it; and adjusting it to the conditions approved as regards the landing place of the Cables, and the distribution of the profits between the State and the Concessionnaire.

In addition, the above-mentioned Company offers a considerable reduction on the annual subsidy asked in the first proposal for the working of the service for twenty years, in exchange for retaining possession of the Cables after the expiration of the contract.

This modification is all the more advantageous, not only on account of the reduction in the subsidy, but mainly because, the Cables remaining the property of the Company which worked them after the expiration of the term of the working referred to, the lines will be maintained in the best condition, and the service could be continued by the same without the necessity for new "Concursos," or any subsidy from the State; and without limiting the Government's right of working at the said period other cables at its own expense or establishing them in such manner as it may deem best for the interests of the service.

In virtue of what has been set forth above, the Royal Order of the 26th of February last was drawn up, accepting the Company's above-mentioned proposal for the establishment and working of the said Cables, with the modification proposed by the Company.

The said Company having deposited the definitive caution-money required, and accepted the schedule of conditions lastly drawn up for the concession of the Cables before mentioned in agreement with the Council of Ministers, the undersigned has the honour to submit for Your Majesty's approval the annexed decree.

Madam,

Your Majesty's most obedient humble servant.

(Signed) TOMÁS CASTELLANO Y VILLARROYA.

Madrid, 10th of April, 1897.

Royal Decree.

In conformity with the proposal of the Minister for the Colonies, and in accord with the Council of Ministers:

In the name of my August Son, King Don Alfonso XIII., and as Queen Regent of the Kingdom, I hereby decree as follows:

46

Article 1.

To Don Vicente Coromina y Marcellan, in the name and as the representative of the Eastern Extension, Australasia and China Telegraph Company, Limited, domiciled in London, is granted the Concession, subject to the annexed Schedule of Conditions, for the construction, establishment and working of three Submarine Telegraph Cables which will connect the Islands of Luzon, Panay, Negros and Zebu in the Philippine Archipelago.

Article 2.

The annexed Schedule of Conditions for the construction, establishment, working and maintenance of the Submarine Telegraph Cables specified in the preceding Article is hereby approved.

Article 3.

The Minister for the Colonies shall order the proper steps for the execution of the present Decree to be taken.

Given at the Palace, the 10th of April, 1897.

(Signed) MARIA CRISTINA.

(Countersigned.) TOMÁS CASTELLANO Y VILLARROYA,

Minister for the Colonies.

(No. 141.)

Deed of Concession for the Construction, Establishment and Working of Three Submarine Telegraph Cables.

In the City and jurisdiction of Madrid, the 14th of April, 1897, Before me, Don Antonio Turón y Boscá, Doctor of Civil, Canon

and Administrative Law, Academic Professor of that of Jurisprudence and Legislation, Advocate and Notary of the Illustrious Colleges of this Capital, with residential rights and fixed residence in the same; after due official summons, in the office of the Most Excellent Senor The Minister for the Colonies, there appeared—

Of the one part

The Most Excellent Senor Don Tomas Castellano y Villarroya, of age, widower, Minister for the Colonies, and as such acting as the representative of the State. He did not submit any Ticket of
47 Registration, being exempted from so doing under the provisions of the Royal Order, dated 23d of March, 1875.

And of the other part

Senor Don Vicente Coromina y Marcellan, of age, widower, Agent residing in this jurisdiction, and provided with a Ticket of Registration of the 5th Class, dated the 4th of September last, bearing the consecutive number 956. He appeared as the representative of the Eastern Extension, Australasia and China Telegraph Company, Limited, domiciled in London; under the Power of Attorney executed in his favour, in the said City of London, bearing the date of 11th of July, 1895, in the presence of John Venn, Notary Public, by Messieurs J. Denison Pender, Director, and F. E. Hesse, Secretary of the said Company, an official translation of which made by the Office for the Translation of Languages of the Ministry of State is inserted verbatim below, in order to accredit in all cases the capacity and powers of the gentleman in whose favour the Power of Attorney is drawn up, the text of which is follows:—

Translation.

Know all men by these presents: That the Eastern Extension, Australasia and China Telegraph Company, Limited, whose Offices are at Winchester House, in the City of London, in England, doth hereby constitute and appoint Senor Vicente Coromina, of the City of Madrid, the Agent and Attorney of the said Company at Madrid, for the special purposes of officially representing the Company, and acting for or on behalf of the Company in all matters and things which may hereafter arise between the Government of His Majesty the King of Spain, or Her Majesty the Queen Regent of Spain and the Company, touching the Luzon-Hongkong Cable, established by the Company in pursuance of and in accordance with a certain Concession and Royal Decree for the laying and working of the said Cable; and generally in connection with the establishment of Telegraphs in any other of the Colonies or Dependencies of His said Majesty in the East; and whatsoever the said Agent and attorney shall lawfully do by virtue these Presents the said Company agrees to ratify.

Lastly, the company hereby revoke- all Powers of Attorney previously given to any person for the purposes above mentioned.

48 In witness whereof the said Company hath hereunto caused its Common Seal to be affixed, this 11th day of July, 1895.

The Common Seal of the Eastern Extension, Australasia and China Telegraph Company, Limited, was hereunto affixed in the presence of [SEAL.]

(Signed) J. DENISON PENDER,
Director.

(Signed) F. E. HESSE,
Secretary.

I, John Venn, of the City of London, Notary Public, duly admitted and sworn, practising in the said City, do hereby certify and attest that on the day of the date hereof the Common Seal of the Eastern Extension, Australasia and China Telegraph Company, Limited, was affixed to the foregoing Power of Attorney, in pursuance of a Resolution of the Board of Directors of the said Company, in my presence, and in that of John Denison Pender, Esq., one of the Directors, and Frederick Edward Hesse, Esq., the Secretary of the said Company; and that the said Director and Secretary signed in my presence at foot of the said Power of Attorney as witnessing the affixing of the said Seal.

In witness whereof I have hereto set my hand and affixed my Seal of Office, in London, this 11th day of July, 1895. [SEAL.]

(Signed) JOHN VENN,
Notary Public.

Examined and found correct for the legalisation of the signature and seal as above, which appears to be those used by Mr. John Venn, Notary Public in this City, London, 11th July, 1895.

URBANO MONTEJO,
[SEAL.] *Counsel-General* (with rubric).

No. 2951.

Examined at this Ministry of State for the purpose of legalising the signature of Don Urbano Montejo, Consul-General in London.

Madrid, 28th September, 1896.

By the Under Secretary the Charge d'Affaires of the Chancellery.

[SEAL.] M. PASTOR Y BEDOYA,
(with rubric).

49 The Translation, continuing:

Further says: Dated 11th July, 1895. The Eastern Extension, Australasia and China Telegraph Company, Limited. Power of Attorney in favour of Senor Vicente Coromina, for the purpose of representing the Company in Madrid, in relation to the Luzon and Hongkong Cable, and other telegraph matters. The head of the Archives, Library and Translation of Languages Department of the Ministry of State.—I hereby certify that the preceding translation of

a Power of Attorney, drawn up in English, submitted to me for this purpose, is a faithful and literal one.

Madrid, 5th October, 1896.

MANUEL DEL PALACIO,
(with rubric).

[Seal of the Department of the Translation of Languages of the Ministry of State.]

This is according to the original, which has been before me in the drawing up of this Deed, and from which I quote in every case.

And the appearers having in my opinion the necessary legal capacity to act in and about the matters above recited, and which capacity they assert not to have been restricted, for the purpose of executing the present Deed of Concession for the establishment and working of the Submarine Telegraph Cables which will connect the islands of Luzon, Panay, Negros and Zebu in the Philippine Archipelago, set forth the following facts:—

Firstly. That under date of the 12th September, 1896, and in No. 258 of the Gaceta de Madrid dated the 14th of the same month and year, there was published the Royal Decree, which reads literally as follows:—

In conformity with the proposal of the Minister for the Colonies, and in accord with the Council of Ministers:

In the name of my August Son, King Don Alfonso XIII., and as Queen-Regent of the Kingdom, I hereby decree as follows:—

That a free public "Concurso" should be announced for the construction and establishment of three Submarine Telegraph Cables, to connect the islands of Luzon, Panay, Negros and Zebu, in the Archipelago of the Philippines, subject to the Schedule of Conditions approved at this date and published in the Gaceta de Madrid, conjointly with the present Decree.

Given at San Sebastian, the 12th September, 1896.

(Signed) MARIA CRISTINA.

(Countersigned) TOMÁS CASTELLANO Y VILLARROYA,
Minister for the Colonies.

**Schedule of Conditions, General, Technical and Financial, for the Construction and Establishment of Three Submarine Telegraph Cables, to Connect the Islands of Luzon, Panay, Negros and Zebu of the Philippine Islands.*

General Conditions.

1. Tenders will be received from private individuals, or companies, for the construction and establishment of the above-mentioned Submarine Telegraph Cables; and, optionally, for their working. The said Tenders shall be submitted open at the Ministry of the Colonies within the period of 90 days from the publication of this Schedule in the Gaceta de Madrid, accompanied by the receipt for the deposit with the "Caja General de Depositos" of 50,000 pesetas in cash, or in Government Funds allowed in such cases, as a provisional guarantee for the carrying out of the Tender, to meet the eventuality of the adjudication of the service. The definite caution-money to be deposited by the Adjudicatee shall be 100,000 pesetas made up in the same way as before, and it shall form a guarantee for the carrying out in all its parts of the Contract entered into.

2. The selection of the Tender to be accepted having been confirmed, the definitive caution-money shall be deposited within fifteen days, reckoning from the date on which the service shall have been adjudicated to the respective Concessionnaire. The amounts of the provisional deposits in respect of the rejected Tenders shall be (forthwith) returned.

51 3. The Minister for the Colonies reserves to himself the right of accepting the Tender which he considers most advantageous; of rejecting all should he not deem any acceptable; or, of inviting the author of the one he considers the best to improve it, in order to adjudicate to him the Concession for the Cables, subject to such variations as may be agreed upon for the purpose.

The acceptance of the Tender which may be definitely approved, on the proposal of the Minister for the Colonies, shall be made at a Council of Ministers, the fact and text of such decision to be published in the Gaceta de Madrid, the accepted Tender to be raised in the meantime to a Public Deed and completed in the presence of the Notary who draws it up for that purpose.

4. The Adjudicatee of the above-mentioned service shall be bound by the decisions of the Authorities and Administrative Tribunals in all questions which may arise between him and the Administration.

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*Extract from Gaceta de Madrid, No. 258, dated 14th September 1896.

5. The Concessionnaire shall bear the cost of drawing up the Contract Deed and Concession for the construction and laying of the Cables, as well as the expense of a first copy which will have to be handed in at the Office of the Ministry for the Colonies.

6. The Concessionnaire shall have duly authorised representatives in Manila and Madrid, possessed of sufficient powers to bind themselves on his behalf in their relations with the Government-General of the Philippines, and with the Central Administration at the Ministry for the Colonies.

7. In order for the Tenders, which may be submitted for the construction and establishment of the said Cables and for their working respectively, to be eligible, it is necessary, in addition to their being accompanied with the receipt referred to under No. 1 of the General Conditions, that the party tendering should declare his acceptance of all the remaining conditions of this Schedule; and that the competing parties should have the legal power to bind themselves; and that those who sign on behalf of other persons or Companies substantiate their agency in due form.

Technical Conditions.

Article 1.

The Cables shall start:—

The first,—that from Luzon to Panay,—from a point of the coast of Tayabas, the nearest possible to the town of Lucena; and
52 terminating if practicable at the town of Capiz, in the second of the above mentioned islands.

The second,—from the port of Iloilo in Panay,—terminating at that of Bacalod, in the island of Negros.

The third,—from the town of Escalante, on the east coast of Negros,—terminating at that of Tuburán, on the west coast of Zebu.

The length of these Cables, taken at the sea level, is estimated at 170 miles for the first, 24 miles for the second, and 13 miles for the third, for each of which a maximum of 15 per cent. ad-tional is allowed for slack.

Article 2.

The definite landing points and the route of the Cables shall be settled by mutual agreement between the Contractor and the technical functionaries of the State commissioned for the purpose, in accordance with the preliminary soundings and surveys of the coasts and sea-bottom, which precede the submersion of the cables, and which shall be carried out at the season or period which the Concessionaire of the service specified may deem best.

By virtue of these studies, and in the event of the Tender not comprising the working of the service, the lengths of the Shore End, Intermediate and Deep Sea Cable sections which shall go from island to island shall also be decided in like manner; for which purpose, the ship charged with the laying shall carry the different types of Cable coiled in the manner required for their being laid in the order previously agreed upon.

The Contractor undertakes to supply the Administration before the definitive taking over of the Cables with a copy in duplicate of the chart signed by the Government Commissioners, showing in detail the route followed by the Cables and an outline of the bottom on which they are laid; indicating also the lengths of the different types of Cable laid.

Article 3.

A Government ship shall be present at the surveys and laying of the cables if the exigencies of the Naval Station of the Philippines will allow of it, and, if necessary, will indicate the route agreeably to the course chosen.

53

Article 4.

The cables shall be constructed conformably with the latest improvements. The contractor shall hand in at the office of the Ministry for the Colonies two samples of the types of Cables manufactured, which are deemed necessary for the above mentioned service, with an explanation with regard to their conditions; upon all of which the Consulting Committee of Telegraphs shall inform themselves.

Article 5.

The Contractor shall establish in the neighborhood of the landing places the mark buoys or beacons which may be requisite to show the route of the Cables, and shall leave duplicates in store.

Article 6.

The Contractor in the event of his Tender not comprising the working, shall, at each of the Stations nearest to the landing places, hand over such instruments and apparatus as may be necessary for the purpose of taking tests, and working and maintaining the Cables; together with a detailed list of all that is supplied for the said purpose.

Article 7.

The Contractor shall address the delegates of the Government direct, both on the matters and unforeseen incidents which may arise

in the manufacture, laying, taking over and repairs of the Cables, as well as on those relating to the carrying out of the Contract.

Article 8.

The Contractor shall admit on board the ship or ships which make the surveys, or lay or repair the Cables, the delegate of the Government, and other officials whom it may appoint for the purpose of watching the operations.

Financial Conditions.

1. The parties tending shall offer:—

a. Simply to carry out the construction and establishment of the three Cables, or

b. To construct, lay and work them on their own account.

2. In both cases the Tender shall specify the maximum period by which the Cables shall be established in perfect working
54 order, reckoning from the date on which the Concession of the said service is granted.

The Concession shall ipso facto become forfeited, with the loss of the caution-money, in event of the Cables not being established within the period and under the conditions specified in the preceding paragraph.

3. It is understood that the installation comprises, at the expense of the Concessionaire, the construction and establishment of cable-houses at the landing points of the Cables; the mark-buoys or beacons pointing out the route of the same; the branch lines to connect them with the stations; as well as the instruments, batteries and working appliances, and the materials for joining up for testing, and for the general service of the lines.

4. For all legal purposes the service shall be considered as a work of "public utility," and the Submarine Telegraph Cables shall be exempt from Customs Dues, after compliance with the Customs Ordinances laid down conformably with the provisions of Article 3 of the Tariff in force in the Philippines.

Particulars of Case A.

5. In the event of the Tender comprising solely the construction and establishment of the Cables, the cost of the above-mentioned service shall be set forth. The said amount shall be paid in four equal instalments,—the first on the provisional taking over of the Cables, and the others in each of the three years following.

6. The Tender shall in the same way set forth the form and mode of making the payment of each instalment; the State always, however, retaining the power of paying up in advance the amount required for completing the payment of the work, with the deduction of the 5 per cent. per annum interest for the period so paid in advance for the time wanting to the due date of the instalment.

7. The parties tendering shall likewise have the power of stating in their Tenders the amount which the State shall pay them for the working of the service during the term of the guarantee, which they may specify, in order to assure the proper working of the Cables.

8. They shall decide in that case whether they shall provide (or not) a telegraph ship for the repair of the damages or faults
55 which may occur to the Cables after the expiration of the specified period, as a guarantee of their installation; and shall in that case fix the amount to be paid to them for the service above mentioned.

9. As soon as the Cables are laid they shall be provisionally taken over by the Government functionaries deputed for the purpose, and on their being satisfied that the Cables as well as the instruments (apparatus), cable-houses, and everything requisite for the proper carrying out of this service, comply with the conditions stipulated in this Schedule—the minutes of the provis-onal taking over shall be drawn up.

10. Starting from the date of the provisional taking over of the Cables, will commence the period of guarantee set forth in the Tender, during which the repair of the damages and faults which may occur in any of the Cables, or in the accessories and apparatus connected therewith, shall be carried out at the sole expense of the Contractor, unless it is proved that these defects have arisen from causes beyond control (force majeure). In such cases a Technical Commission, nominated by the Governor-General of the Philippines, shall decide, without appeal, respecting the causes of the damages which may arise, after hearing the technical representative of the enterprise.

11. During the term of the guarantee the Contractor shall be bound to maintain at his expense an electrician inspector at each of the six stations of the landing places of the Cables—whose staff shall direct during the said period the manipulation and see to the maintenance of the Cables and the apparatus belonging to them, the service of the same being carried on under his instructions.

12. On the expiration of the above mentioned period of guarantee, the Cables and all the apparatus and accessories set forth in the list referred to in No. 6 of the Technical Conditions shall be definitively taken over, and in the event of everything being found in perfect working order, the minute drawn up by the Governor-General of the Philippines shall be approved. On this being reported to the Minis-

try for the Colonies, that Department shall order the return of the definitive caution-money deposited by the Concessionnaire.

13. In the event of the Tender comprising the service for the repair of the Cables after the expiration of the period of guarantee, the Treasury of the Philippines shall pay the enterprise for each day of service of the ship and its staff the amount specified in the
56 Tender, from the day preceding that on which the repairing operations begin till two days after that on which, both days inclusive, the Government delegate (who shall be present at the repairing operations) shall certify that the repair has been completed.

14. The receipts taken during the period of the guarantee shall belong to the State.

Particulars of Case B.

15. In the event of the Tender comprising, in addition to the construction and establishment of the Cables, their working by the Concessionnaire, the subsidy and mode of its payment shall be specified, and may be arranged in one of the following ways:

a. By the payment of a fixed amount in one or several instalments, the profit of the working to be divided between the Concessionnaire and the State in such proportions as may be offered.

b. By a guarantee of interest on the capital invested in the construction of the Cables, the profits of the working to be reckoned as an integral part of the interest mentioned.

c. By an annual payment during the period of the working, the profits in this case also to be divided, in the proportion which may be offered, between the State and the Concessionnaire.

16. The Concessionnaire shall submit the Tariff for the carrying out of the service of the Cables, it being understood that the transmission of official telegrams shall be obligatory—taking precedence —and at least at half the rates charged for private dispatches.

17. The period of the installation of the Cables, as well as that of their working by the Concessionnaire, shall be specified by him in the Tender which he submits for the purpose. It is understood that the term of the working of the said service begins from the taking over of the Cables and their accessories.

As soon as the Cables are laid they shall be taken over by the Government functionaries nominated for this purpose, and upon its being shown that the Cables, together with the instruments, cables-houses, and everything requisite for carrying out the service mentioned meet all the conditions specified, the Deed of the said taking over shall be drawn up and executed; and upon
57 being approved by the Governor-General of the Philippines, and such approval being notified to the Ministry for the Col-

onies, the latter Department shall order the return of the Caution-money deposited by the Concessionnaire.

18. The amount of the subsidy shall be paid monthly at Manila, by the "Caja de la Tresoria Central."

19. The telegraphists and other employés in the service of the Cables shall be appointed by the Concessionnaire, but in the exercise of their functions they shall be subject to the Rules and Regulations established for the official service of this Department in the Philippine Islands.

20. The Government and supreme authorities of those Islands shall enjoy the right of inspecting the correspondence of every kind; and shall have the power of refusing to forward telegrams, whether those handed in for transmission or those received by the line, in the event of their contents being contrary to good morals or prejudicial to the safety of the State or to public order, and also of prohibiting cipher or code messages in all correspondence of a private character.

21. In the event of the conductors becoming useless from causes beyond the control of the Enterprise, during the term of the Contract, it undertakes to replace them, so that communication is again restored within a period not exceeding three months. On the expiration of this period, should the repair not be effected, the subsidy shall be suspended until the service has been re-established; and should six months further pass without its being restored, it shall be understood that the subsidy lapses entirely.

22. Should the service of the Cables be interrupted, totally or partially, for a period exceeding one month, from any causes attributable to the negligence or bad organisation and system of the Enterprise, whether proceeding from defective apparatus or from its technical or administrative department, the Government shall have power to take charge of the Cables and of the service provisionally, and to receive the products of their working; these shall be handed back to the enterprise at the proper time, after deducting the cost of the official administration and that of the maintenance and repair,
58 or modification and change of apparatus which may have been necessary. The service shall continue to be carried on by the State as long as the Enterprise fails to re-organise the service in a proper manner, it being understood that the Concession lapses in the event of the total interruption of the service on the part of the Enterprise exceeding one year.

23. Special regulations shall fix, in accord with the Concessionnaire, what may be deemed proper in respect to the application of the tariff to be in force for the transmission by the enterprise of private telegrams; and shall specify the guarantee that he shall give for the payment of the portion of the rates on the dispatches which it may receive and forward over the Government Telegraph Lines.

24. Six months before the termination of the period of the working of the service by the Concessionnaire there shall be drawn up in triplicate a detailed inventory of the Cables, apparatus and all accessories, specifying the condition in which they are—the respective certificate to be signed by the Delegate of the Administration, and the Concessionnaire, who shall retain a copy of the same and of the inventory—handing over one to the Governor-General of the Philippines, and forwarding the third one to the Ministry for the Colonies.

Approved by Her Majesty.

TOMÁS CASTELLANO.

Secondly. That on the 12th December last, the appearer Don Vicente Coromina, acting as Agent, submitted the following proposal (published in the Gaceta de Madrid, No. 59, dated 28th February, 1897):—

Don Vicente Coromina y Macellán, the Representative of the Eastern Extension, Australasia and China Telegraph Company, Limited, specially authorised for the purpose by the Board of the said Company, agreeably to the statement of the accompanying enclosure; as well as to the receipt No. 53, which shows the deposit of 50,000 pesetas required by the Schedule of Conditions for the "Concurso" published in the Gaceta de Madrid dated the 14th September last, for the construction and establishment of three Submarine Telegraph Cables to connect the islands of Luzon, Panay, Negros and Zebu —of the Philippine group—has the honour to submit for the approval of his majesty's Government the following proposal for the carrying out of this work, undertaking to execute it under the following condition:—

59 The Company shall establish, at its own expense, submarine telegraph communication between Manila and Panay, between Panay and Negros, and between Negros and Zebu, within the period of nine months, reckoning from the date of the signature of the Contract; and shall retain the ownership of the Cables, the working and maintenance of the same being also consequently at its expense. The Company asks in exchange:—

An annual subsidy of £5,000 (five thousand pounds sterling) for a period of twenty years; or a proportionately larger sum for a period of ten years, should this suit the Government better; or the concession of the (exclusive) privileges and exemptions treated of by the annexed communication respecting the Company's new proposals for the extension of the Hongkong-Bolinao Cable to Manila.

The Company shall transmit official dispatches over these Cables as an obligatory service, enjoying precedence, at half the rates established for private dispatches.

The Company fixes a uniform rate of 50 centimes of a franc per word for all the Visayas Cables; to which tax the Government shall

decide the amount to be added for the transit over the land line system.

Madrid, 12th December, 1896.

VICENTE COROMINA,
The Company's Representative.

Thirdly. The party tendering accompanied the foregoing proposal with a receipt issued by the Treasurer-General of Deposits, showing that the required deposit of 50,000 pesetas had been made, which document reads as follows:—

Volume 1st. No. 53.—Receipt No. 253,119.—Register No. 10,978.—Treasury-General of Deposits.—Chief Treasury Cash Deposit.—Transferable.—Provisional for "Subastas."

The firm of D. E. Sáinz and Sons has, out of its own means, on account of Messrs. Samuel Montagu and Company, of London, on behalf of the Eastern Extension, Australasia and China Telegraph Company, Limited, of London, and as a guarantee required in the free public "Concurso" announced in the Gaceta de Madrid, dated the 14th of September (1896), for the establishment of the Visayas Cables (Philippine Islands), paid into the class of deposits above-mentioned the amount of the 50,000 pesetas in cash, which
60 will be returned to it under the proper formalities, on the presentation of this receipt in the event of the Concession of the said service not being adjudicated to the depositor. The General Revenue Department shall take note of this receipt, which bears no correction, failing which noting it shall have no [binding] force nor value.

Madrid, 14th of December, 1896.

There are 50,000 (fifty thousand) pesetas.
For the Chief Treasurer,
[Signature illegible. Take note hereof.]
For the Chief Comptroller,
(Signed) RAMÓN DE ISLA.
Entered in General Revenue Office,
(Signed) T. GÓMEZ.
Entered in Treasury Office,
(Signed) RODRÍGUEZ.
(All with rubric.)

Fourthly. Two Proposals having been presented, one for the construction simply, and the other for the construction and working of the said Cables; this second being considered the most desirable for the said service, the Company making the Tender was invited to improve its proposal and to adapt it still better to the conditions of the "Concurso."

The Eastern Extension Australasia, and China Telegraph Company, Limited, accordingly improved and modified its proposal in the following terms:

Nothing having been specifically settled at the "Concurso" as to the Cables after the expiration of the Contract being the property of the party tendering; and having regard to the fact that the Company desires to retain their ownership even after this period, it offers a reduction of £500 (five hundred pounds) per annum on the amount of £5,000 (five thousand pounds) previously asked as subsidy.

The reasons which led the Company to propose the landing of the Panay Cable at Manila no longer existing, it now offers to lay the Cables between Luzon and Panay, Panay and Negros, and Negros and Zebu.

The Company shall pay the State the 10 per cent which, by the application of the uniform rate of 50 centimes of a franc per word, the Visayas Cables yield; after first deducting the amount of the expenses for the maintenance of the six stations, reckoned
61 at £6,000 (six thousand pounds) per annum. It is understood that the said rate shall be the only one to be applied to the telegrams transiting over these Cables, as no other Terminal or Transit Tax shall be imposed.

The Company trusts that the Government will grant it sufficient offices for the service of the six stations, or in default thereof lands (or plots of ground) to enable it to build such on.

Madrid, 11th of February, 1897.

(Signed) VICENTE COROMINA,
The Company's Representative.

A true copy,

(Signed) G. J. DE OSUNA,
Under-Secretary.

(The foregoing is the text published in No. 59 of the Gaceta de Madrid, before mentioned.)

Fifthly. That by Royal Order of 26th February last, addressed to the Governor-General of the Philippine Islands, the proposal and modification of the before-mentioned Company were accepted in the terms which the said Royal Order contains, and which read as follows:

MOST EXCELLENT SIR:

The proposals which were submitted at the "Concurso" for the construction, establishment and working of the Submarine Telegraph Cables which will connect the Islands of Luzon, Panay, Negros and Zebu of that Archipelago, referred to by the Royal Decree and Schedule of Conditions approved on the 12th September last for the adjudication of the said service, having been examined;

Whereas the proposal submitted by the Eastern Extension, Australasia and China Telegraph Company, Limited, is the most advantageous one, and that on being invited to do so, the said Com-

pany improved its proposal under Provision 3 of the General Conditions approved for the "Concurso," agreeably to the modification submitted on the 11th instant;

62 His Majesty the King (whom God preserve), and in his name the Queen Regent of the Kingdom, has been pleased to ordain, in accord with the Council of Ministers, that the proposal of the Eastern Extension, Australasia and China Telegraph Company, Limited, domiciled in London, dated the 12th December, 1896, for the construction, establishment, working and maintenance of the Telegraph Cables specified, be accepted as set forth by the first of the three modes which the Company submits in the said proposal—that is to say, by means of the payment of an annual subsidy for a period of twenty years, with the modifications set forth in its communication dated the 12th instant; the Cables, to which the Royal Decree of the 12th September, 1896, refers, starting from the points indicated in the first of the Technical Conditions of the Schedule approved for the "Consurso" for adjudication of this service; and the tariff or respective rates for the working of the same to be settled in due time.

I communicate this by Royal Order to Your Excellency for your guidance and the due legal effects; this resolution to be published in the Madrid and Manila Gazettes. May God guard your Excellency many years.

Madrid, 26th February, 1897.
(Signed)
CASTELLANO.

To the Governor-General of the Philippine Islands.

Sixthly. That in fulfilment of the conditions exacted by the State, the Eastern Extension, Australasia and China Telegraph Company, Limited, increased the deposit made as guarantee, to the amount of 100,000 (one hundred thousand) pesetas,—that is to say, by the payment of a further 50,000 (fifty thousand) pesetas, as appears from another receipt of the Treasury-General of Deposits, which reads verbatim as follows:

Volume 15th.—No. 152.—Receipt No. 254,677.—Register No. 52,179.—Treasury-General of Deposits.—Chief Treasurer.—Deposit in hard cash.

Don Vicente Coromina y Marcellan, on behalf of the Eastern Extension, Australasia and China Telegraph Company, and in order to complete the caution-money required by the "Con-
63 curso" published by Royal Decree of the 12th September, 1896, for the establishment of the Visayas Cables (Philippines), has paid in at the disposal of the Ministry for the Colonies, in the class of deposits above mentioned, the sum of 50,000 (fifty thousand) pesetas in cash, which will be returned to him on the undertaking to which it refers being brought to a termination; with

interest at the rate of — per cent per annum, from the present day to that exclusive of its return. The General Revenue Office shall take note of this receipt, failing which it shall be without (binding) force or value.

Madrid, 9th March, 1897.
There are 50,000 (fifty thousand) pesetas.
For the Chief Treasurer,
[Signature illegible. Take note hereof.]
(Signed) SANDALIO GRANJA,
Chief Comptroller.

Entered in the General Revenue Office,
(Signed) J. GOMEZ RENOVALES.

Entered in the Treasury Department,
(Signed) RODRIGUEZ.
(All with rubric.)

Seventhly. That by Royal Decree dated the 10th instant, the Concession in question is granted to the Company so often mentioned, subject to the Schedule of Conditions accompanying the said Royal Decree, both of which documents now follow and read verbatim:

Royal Decree.

In conformity with the proposal of the Minister for the Colonies, and in accord with the Council of Ministers:

In the name of my August Son, King Don Alfonso XIII., and as Queen Regent of the Kingdom, I hereby decree as follows:

64 **Article 1.**

To Don Vicente Coromina y Marcellán, in the name and as the representative of the Eastern Extension, Australasia and China Telegraph Company, Limited, domiciled in London, is granted the Concession, subject to the annexed Schedule of Conditions, for the construction, establishment and working of three Submarine Telegraph Cables which will connect the Islands of Luzon, Panay, Negros and Zebu in the Philippine Archipelago.

Article 2.

The annexed Schedule of Conditions for the construction, establishment, working and maintenance of the Submarine Telegraph Cables specified in the preceding Article is hereby approved.

Article 3.

The Minister for the Colonies shall order the proper steps to be taken for carrying out the present Decree.

Given at the Palace, this 10th day of April, 1897.

(Signed) MARÍA CRISTINA.

(Countersigned)

TOMÁS CASTELLANO Y VILLARROYA,

Minister for the Colonies.

65 *Schedule of Conditions for the Establishment and Working of the Submarine Telegraph Cables which will Connect the Islands of Luzon, Panay, Negros, and Zebu, in the Archipelago of the Philippines.*

Article 1.

The Cables shall start as follows:

The first,—that from Luzon to Panay,—from a point of the coast of Tayabas the nearest possible to the town of Lucena, and terminating if practicable at the town of Capiz, in the second of the above mentioned islands.

The second, from the port of Iloilo, terminating at that of Bacolod, in the Island of Negros.

The third, from the town of Escalante on the east coast of Negros, and terminating at the town of Tuburán, on the west coast of Zebu.

Article 2.

The definitive landing points and the route of the Cables shall be settled by mutual agreement between the Contractor and the technical functionaries of the State commissioned for the purpose, in accordance with the preliminary soundings and surveys of the coasts and sea bottom which precede the submersion of the Cables, and which shall be carried out at the season or period which the Concessionnaire of the service specified may deem best.

Article 3.

A Government ship shall be present at the surveys and laying of the Cables if the exigencies of the Naval station of the Philippines will allow of it, and, if necessary, will indicate the route agreeably to the course chosen.

Article 4.

The Contractor shall admit on board the ship or ships which make the surveys, or lay or repair the Cables, the delegate of the Government and other officials whom it may appoint for the purpose of watching the operations.

67 Article 5.

The definitive caution-money of 100,000 (one hundred thousand) pesetas having been deposited within the period of fifteen days, as specified in No. 2 of the General Conditions of the "Concurso," the Deed of the Adjudication of the service shall be notarially drawn up

66 *Pliego de Condiciones Para el establecimiento y explotación de los cables telegráficos submarinos que han de unir las islas del Luzón, Panay, Negros y Cebù, del Archipiélago de las Filipinas.*

Artículo 1.°

Los cables partiràn:—

El Primero, ó sea el de Luzón á Panay, de un punto de la costa de Tabayas, lo más próximo posible al pueblo de Lucena, para terminar, á ser factible, en el mismo pueblo de Capiz en la segunda de las citadas islas.

El Segundo, del puerto de Iloilo en Panay, y terminará en el de Bacolod, en la isla de Negros.

El Tercero, del pueblo de Escalante, en la costa Oriental de Negros y terminará en el de Turbarán en la costa Occidental de Cebú.

Artículo 2.°

Los puntos definitivos de amarre y el trazado de los cables se fijarán de común acuerdo entre el contratista y los funcionarios facultativos del Estado commisionados al efecto, mediante los estudios de sondaje y reconocimiento de costas y fondos, el que habrá de preceder á los trabajos de immersión de los cables, y habrá de verificarse en la época ó período que se estime mejor por el concesionario del expresado servicio.

Artículo 3.°

Un buque del Estado asistirá á los estudios y trabajos de colocación de los cables, si las atenciones del Apostadero de Filipinas lo permiten, y en caso necesario marcará la derrota con arreglo al trazado elegido.

Artículo 4.°

El contratista admitirá á bordo del buque ó buques que verifiquen los estudios ó tiendan ó reparen los cables, al Delegado del Gobierno y demás comisionados que éste designe para inspeccionar las operaciones.

68

Artículo 5.°

Constituída la fianza definitiva de 100,000 pesetas prestada por el adjudicatario, dentro del plazo de quince dias, á que se refiere la condiciòn 2.ª de las generales del concurso, se otorgará a escritura de la adjudicación del servicio. Dicha fianza responderá del compli-

and executed. The said caution-money shall serve as a guarantee for the fulfilment of all the conditions of the Contract until all the Cables are duly laid and taken over.

Article 6.

The maximum period for the Cables being established in perfect working order shall be nine months, reckoning from the date of the adjudication of the service. The Concession shall lapse and the caution money be forfeited should the Cables not be duly laid within the period specified.

Article 7.

It is understood that the installation comprises, at the expense of the Concessionnaire, the construction and establishment of cable-houses at the landing points of the Cables; the mark-buoys or beacons pointing out the route of the same; the branch lines to connect them with the stations; as well as the instruments, batteries and working appliances, and the materials for joining up for testing, and for the general service of the lines.

Article 8.

For all legal purposes the service shall be considered as a work of "public utility," and the Submarine Telegraph Cables shall be exempt from Customs Dues, after compliance with the Customs Ordinances laid down conformably with the provisions of Article 3 of the Tariff in force in the Philippines.

Article 9.

The Concessionnaire undertakes to work, at his own expense and risk, the Cables of this Concession for a period of twenty years, the said term to begin from the date of the taking over of the Cables and their adjuncts in perfect working order.

69 Article 10.

The Concessionnaire shall enjoy an annual subsidy of £4,500 (four thousand five hundred pounds sterling), payable monthly in twelve instalments, during the whole term of the working of the Cables, the said payments being made at Manila by the "Caja de la Tesoreria Central" (Chief Treasury Office) of those Islands.

Article 11.

As soon as the Cables are laid they shall be taken over by the Government functionaries nominated for this purpose, and upon its being shown that the Cables, together with the instruments, cable-houses, and everything requisite for carrying out the service men-

miento de todas las condiciones del contrato hasta la completa instalaciòn de los cables y aprobaciòn de su recepción.

Artículo 6.°

El plazo máximo dentro del cual deberà quedar instalados los cables en perfecto estado de uso, será el de nueve meses, á partir de la fecha en que se adjudique el servicio. La concesión caducará con predida de la fianza sino quedarán instalados los cables dentro del indicado plazo.

Artículo 7.°

Se entenderán comprendidos en la instalacion y á cargo del concesionario la construcción y establecimiento de las casetas de amarre en los extremos de los cables; los de las boyas ó valizas que indiquen la direccion de éstos; las ramales de línea para unirlos con las estaciones, así como los de los aparatos, pilas, accesorios de montaje y los útiles de empalmar para el servicio de pruebas y de conservación de las líneas.

Artículo 8.°

Este servicio se considerará como obra de utilidad pública para todos los efectos legales. Los cables teleficos submarinos se hallan libres de derechos arancelarios, previo el cumplimiento de lo que determinan las Ordenanzas de Aduanas, con arreglo á la disposición 3.ª del Arancel vigente en Filipinas.

Artículo 9.°

El concesionario se obliga á explotar por su cuenta y riesgo los cables de esta concesión, durante un período de viente años, empezando á contarse dicho plazo, á partir de la recepción de los cables y sus anejos, en perfecto estado de uso.

70

Artículo 10.

El concesionario disfrutará de una subvención anual de curtro mil quinientas libras esterlinas abonadas mensualmente por dozaves partes, durante todo el plazo de la explotación de los cables, y haciéndose dicho abono en Manila por la Caja de la Tesorirfa Central de aquellas islas.

Artículo 11.

Una vez instalados los cables, se hará la recepción de los mismos por los funcionarios del Gobierno que al efecto se deleguen, y comprobado que reunen las condiciones estipuladas, asi como los aparatos, casetas de amarre y todo lo necesario para el indicado servicio, se ex-

tioned meet all the conditions specified, the Deed of the said taking over shall be drawn up and executed; and upon being approved by the Governor-General of the Philippines, and such approval being notified to the Ministry for the Colonies, the latter Department shall order the return of the caution-money deposited by the Concessionnaire.

Article 12.

The telegraphists and other employés in the service of the Cables shall be appointed by the Concessionnaire, but in the exercise of their functions they shall be subject to the Rules and Regulations established for the official service of this Department in the Philippine Islands.

Article 13.

The Government and supreme authorities of those Islands shall enjoy the right of inspecting the correspondence of every kind; and shall have the power of refusing to forward telegrams, whether those handed in for transmission or those received by the line, in the event of their contents being contrary to good morals or prejudicial to the safety of the State or to public order, and also of prohibiting cypher or code messages in all correspondence of a private character.

Article 14.

In the event of the conductors becoming useless from causes beyond the control of the Enterprise, during the term of the Contract, it undertakes to replace them, so that communication is again restored within a period not exceeding three months. On
71 the expiration of this period, should the repair not be effected, the subsidy shall be suspended until the service has been reestablished; and should six months further pass without its being restored, it shall be understood that the subsidy lapses entirely.

Article 15.

Should the service of the Cables be interrupted, totally or partially, for a period exceeding one month, from any cause attributable to the negligence or bad organisation and system of the Enterprise, whether proceeding from defective apparatus or from its technical or administrative department, the Government shall have power to take charge of the Cables and of the service provisionally, and to receive the products of their working; these shall be handed back to the Enterprise at the proper time, after deducting the cost of the official administration, and that of the maintenance and repair, or modification and change of apparatus which may have been necessary. The service shall continue to be carried on by the State as long as the

tenderá el acta di dicha recepción, la que, aprobado por el Gobernador general de Filipinas, y dada cuenta de la aprobación al Ministeria de Ultramar, se dispondrá por éste la devolución de la finanza prestada por el concessionario.

Artículo 12.

Los Telegrafistas y demás empleados al servicio de los cables serán elegidos por el concesionario, pero quedarán sujetos en el ejercicio de sus funciones á las disposiciones reglamentarias establecidas para el servicio oficial de este ramo en las islas Filipinas.

Artículo 13.

El Gobierno y las Autoridades superiores de Aquellas islas ejercán la inspeción de la correspondencia de toda clase, y podran negar el curso de los despachos, ya sean presentados á expedición ó ya recibidos por la línea, siempre que su contenido contrario á la moral ó perjudicial á la seguridad del Estado ó al orden público, pudiendo prohibirse la cifra ó clave, reservada en toda correspondencia de carácter privado.

Artículo 14.

En el caso de que los conductores se inutilicen por causas independientes de la voluntad de la Empresa en el término de duración del contrato, aquélla se obliga à reemplazarlos de modo que de nuevo quede expedita la communicaciòn en un plazo que no excederà de tres meses. Transcurrido este plazo, y no re-
72 parda la averìa, quedarà en suspenso la subvenciòn hasta tanto que se restableciere el servicio, y si transcurrieran seis meses màs sin que se restableciere, se entenderà caducada subvenciòn.

Artículo 15.

Cuando se interrumpa total ò parcialmente el servicio de los cables por un plazo superior al de un mes, por efecto de cualquiera causa imputable à la negligencia ò mala organizaciòn y règimen de la Empresa, ya proceda de imperfecciòn de los aparatos, ya de la parte productos de su explotaciòn. Estos seràn entregados à la Empresa facultativa ò técnica ò de la administrativa, el Gobierno podrà hacerse cargo de los cables y del servicio provisionalmente, y percibir los cuando corresponda, deducidos previamente los gastos de la administraciòn oficial, y los de conservaciòn y reparaciòn ò modificaciòn y cambio de aparatof que hubiera sido necessario hacer. Durarà la

enterprise fails to reorganise the service in a proper manner, it being understood that the concession lapses in the event of the total interruption of the service on the part of the Enterprise exceeding one year.

Article 16.

The Company holding the Concession shall pay the State the ten per cent. which tax in its application to cablegrams is fixed after first deducting the amount of the expenses for the maintenance of the Stations, calculated at £6,000 (six thousand pounds sterling) per annum, the said expenses not to exceed the amount specified.

Article 17.

It shall be obligatory to transmit official despatches, which shall enjoy precedence, at half the rates charged for those of a private character. Official despatches, like private ones, shall be handed to the employés of the State for them to forward or deliver to the addressee.

Article 18.

The tax applicable to telegrams transiting over the said Cables shall be uniform, — fifty centimes of a franc per word, — no transit nor terminal rate being charged for the telegraphic transmission over the land lines belonging to the Govern-
73 ment in the Islands of Panay, Negros and Zebu. There is a sur-tax of five centimes of a franc per word on telegrams transiting between the above mentioned Islands and the others of the Archipelago.

Article 19.

On the expiration of the twenty years' subsidised working of the Cable service granted to the Company holding the Concession, the lines shall continue to be the property of the Company, which may continue the working without any subsidy; but, on the other hand, the State shall be at liberty to carry on the working through other Cables, in the manner it may deem best for the said service, though at its own expense or that of another Company.

Article 20.

The Adjudicatee of the above-mentioned service shall be bound by the decisions of the Authorities and Administrative Tribunals in all questions which may arise between him and the Administration.

incautaciòn del servicio por el Estado cuanto tarde la Empresa * en organizar de nuevo el servicio en las debidas condicienes; entendièndose caducada la concesiòn si la interrupciòn total del servicio por parte de la Empresa] excediese de un año.

Artículo 16.

La Compañia concesionaria abonará al Estado el diez por ciento que por la aplicación de la tasa se fije por los cablegramas, después de deducir el importe de los gastos para el mantenimiento de las estaciones, calculadas en 6,000 libras anuales, no pudiendo exceder dichos gastos de la expresada cantidad.

Artículo 17.

Los despachos oficiales serán de servicio obligatorio y preferente, y á mitad del precio de los de carácter particular.

Tanto los despachos oficiales como los particulares serán entregados á los empleados del Estado para su transmisión ó para su remisión al destinatario.

Artículo 18.

Lo tasa aplicable á los telegramas que se curson por dichos cables, será uniforme y de cincuenta céntimos de franco por palabra, no cobrándose tasa alguna de tránsito ni terminal por la circulcación telegráfica en las lineas terrestres dependientes del
74 Gobierno en las islas de Panay, Negros y Cebú. Se establece una sobretasa de cinco centimos de franco por palabra para los cablegramas que se cursen entre las citadas islas y las demás del Archipiélago.

Artículo 19.

Terminado el plazo de los veinto años do explotación subvencionada del servicio de los cables por la Compañía concesionaria, quedarán las lineas de propiedad de la misma, pudiendo después continuarse la explotación por dicha Compañía sin subvención alguna, pero quedando siempre el Estado en libertad de realizar la explotación con otros cables de la manera que mejor considere para dicho servicio, bien por su cuenta ó por la de otra Compañía.

Artículo 20.

El adjudicatario del expresado servicio quedará obligado á las decisiones de las Autoridades y Tribunales administrativos en todas las cuestones que pueda tener con la Administración.

*These words were omitted (apparently through a clerical error) in the copy of the Concession furnished to the Company by the Spanish Government. They appear, however, in the version published in the Gaceta de Madrid of 25th April, 1897.

Article 21.

The Concessionnaire shall bear the cost of drawing up the Contract Deed and Concession for the construction and laying of the Cables, as well as the expense of a first copy which will have to be handed in at the Office of the Ministry for the Colonies.

Article 22.

The Concessionnaire shall have duly authorised representatives in Manila and Madrid, possessed of sufficient powers to bind themselves on his behalf in their relations with the Govern*ment*-General of the Philippines, and with the Central Administration at the Ministry for the Colonies.

Madrid, 6th April, 1897.
(Signed) TOMÁS CASTELLANO,
Minister for the Colonies.

Accepted on behalf of The Eastern Extension, Australasia and China Telegraph Company—
(Signed) VICENTE COROMINA Y MARCELLAN.

10th April, 1897.
Approved by His Majesty.
(Signed) CASTELLANO.

Artículo 21.

Serán de cuenta del concesionario los gastos de otorgamiento de la escritura del contrato y concesión de las construcción y tendido de los cables, asi como los de una primera copia, que habrá de entregarse en el Ministerio de Ultramar.

Artículo 22.

El concesionario tendrá representantes autorizados en Manila y Madrid, con la capacidad suficiente para obligarse en nombre de aquél en sus relaciones con el Gobierno general de Filipinas y con la Administraciòn Central en el Ministerio de Ultramar.

Madrid 6 de Abril de 1897.
El Ministro de Ultramar,

TOMÁS CASTELLANO.

Aceptado en nombre de la Compañia The Eastern Extension, Australasia and China Telegraph—

VINCENTE COROMINA.

10 de Abril de 1897.
Aprobado por S. M.

CASTELLANO.

75 Eighthly. This Deed having been substantiated in the terms specified, and it being therefore the duty of the parties thereto to execute it in due and proper form, in fulfilment of what has been agreed, the appearers accordingly intervene to carry it into effect under the following:

Conditions.

First. The Eastern Extension, Australasia and China Telegraph Company, Limited, domiciled in London, represented in virtue of the Power of Attorney inserted at the commencement (of this Deed) by Don Vicente Coromina, hereby accepts the Concession for the construction, establishment and working of three Submarine Telegraph Cables, which will connect the Islands of Luzon, Panay, Negros and Zebu, in the Archipelago of the Philippines, strictly subject to the Schedule of Conditions accepted and signed by the State and the representative of the Company, and approved by His Majesty in granting the Concession in virtue of the Royal Decree, which is inserted with the said Schedule, and is there reproduced in all its parts.

Second. In guarantee of the fulfilment of the Conditions stipulated, Señor Coromina, acting as the representative of the Eastern Extension, Australasia and China Telegraph Company, Limited, places at the disposal of the Ministry of the Colonies the 100,000 Pesetas which he has paid in hard cash into the Treasury-General of Deposits, in order that it may indemnify itself for any prejudice which may arise to the State in the carrying out of the Contract

Third. The Most Excellent Minister for the Colonies, as the representative of the State, declared that this Contract shall be duly kept with the Eastern Extension, Australasia and China Telegraph Company, Limited, provided that this latter fulfils all and each one of the Conditions comprised in the same.

Fourth. The Company is subject to the decisions of the Tribunals which the Administration may order or give respecting any act or question which may arise out of this Deed.

Such is the Deed which they execute in due form, and both the contracting parties, as devolves upon them in their representative capacity, respectively bind themselves in legal form to its due fulfilment and strict observance.

76 *Legal Notification.*

I, the undersigned Notary, notify that the first copy of this Deed has to be presented at the Office for the Collection of Dues on Royal Taxes and Transfer of Real Property, so that the needful may be done in paying the Treasury the proper dues within the periods and under the pains and penalties laid down by the Law of imposts for defaulters. In confirmation of all whereof the parties hereto, together with the Attesting Witnesses, Don Martin Pedoche Mayorga

and Don José Navarro Sancho, both of this jurisdiction and legally qualified to act as such witness (which they declare after being informed of the reasons constituting qualification), will sign.

I, the undersigned Notary proceed to read aloud this document, the parties hereto having waived the right which the law gives them of reading it themselves.

As regards all that is set forth in the present public document, and of the knowledge and other circumstances stated regarding the parties executing it, I, the undersigned Notary, seal and sign, attest and rubric.

(Signed) TOMÁS CASTELLANÓ.
(Signed) VICENTE COROMINA.
(Signed) MARTIN PEDROCHE.
(Signed) JOSÉ NAVARRO.
(Signed) ANTONIO TURÓN.
[SEAL.] (All with rubric.)

This is the first correct copy of the original Deed No. 141 in my current Register of Public Instruments.

At the instance of the Minister for the Colonies I ssue it in a sealed half-sheet of the first class No. 6,678, and in 14th of 13th class, numbers from 724,987 to 725,000 both inclusive, which I sign, seal and rubric in Madrid.

(Here follows note of clerical errors.)

[L. S.] (Signed) ANTONIO TURÓN.

Having been examined, this Document is returned to the party interested, in order for him to get it exempted from the tax, the Deed which it contains constituting a caution-money in favor of the State (Article 31 of the Regulations).

Don Vicente Coromina y Marcellán has this day paid in fees 75 centimes of a peseta, agreeably to c/p No. 1,423.

Madrid, 20th April, 1897.

(Signed) B. CERVIGÓN.
[SEAL.] *Counsel of the State.*

Here there is a Seal on which is inscribed: "Liquidaciòn del impuesto de derechos reales, Madrid."

A true copy.

(Signed) G. J. DE OSUNA,
Under-Secretary.

77 *Schedule C.*

Extension of Cape Bolinao Cable to Manila. Deed of Concession for the Establishment and Working of a Submarine Telegraph Cable Between Hongkong and Manila. Dated 30th March, 1898.

78 Testimonio Literal de la 1a Copia de la Escritura de Concesion Para el Establecimiento y Explotacion de un Cable Telegráfico Submarino Entre Hong-Kong y Manila. Otorgada en 30 Marzo, 1898.

Expedido en Madrid á 12 de Abril, de 1898, Por D. Rafael Delgado Monreal, como sustituto de D. Antonio Turón y Boscá, Doctor en Derecho Civil y Canónico, y Administrativo, Académico Profesor de la Real Academia Matritense de Jurisprudencia y Legislación; Abogado y Notario de los Ilustres Colegios de esta Capital.

Calle de las Torres, No. 4, 2° Dra.

Telefono No. 4082.

80 *Testimonio Literal.*

Don Rafael Delgado Monreal, Abogado y Notario de los Illustres Colegios de Madrid, con vecindad y residencia fija en esta Corte, Doy Fé: Que por Don Vicente Coromina Marcellán como representante de la Campañía "The Eastern Extension, Australasia and China Telegraph Company, Limited," se me ha exhibido la primera copia de la Escritura de Concesion para el establecimiento y explotación de un cable telegráfico submarino entre Hong Kong y Manila requiriendome para que deduca testimonio literal de dicho documento que copiado á la letra dice asi:—

Numero ciento cincuenta y sieta.

Escritura de Concesion. Para el Establecimiento y Explotación de un Cable Telegráfico Submarino entre Hong-Kong y Manila.

En la Villa y Corte de Madrid á treinta de Marzo, de mil ochocientos noventa y ocho, Ante mi, Don Antonio Turón y Boscá, Doctor en Derecho Civil y Canónico y Administrativo, Academico Profesor de la de Jurisprudencia y Legislacion, Abogado y Notario de los Ilustres Colegios de esta Capital, con vecindad y residencia fija en la misma, constituido previo requerimiento en el Ministerio de Ultramar, comparacen.

De Una Parte.

El Excmo. Señor Don Segismundo Moret y Prendergast, Ministro de Ultramar, quien como tal interviene en representación del Estado, no exhibiendo ni Cedula Personal, por hallarse exceptuado de hacerlo en atencion a comparecer oficialmente, con arreglo à lo disquesto en la Real Orden de veintitres de Marzo, de mil ochocientos setenta y cinco,

79 Attested Copy of the 1st Copy of the Deed of Concession for the Laying and Working of a Submarine Telegraph Cable Between Hongkong and Manila. Executed on 30th March, 1898.

Drawn up in Madrid, the 12th April, 1898, by D. Rafael Delgado Monreal, as Deputy of D. Antonio Turón y Boscá, Doctor of Civil, Canon and Administrative Law, Academic Professor of the Royal Madrid Academy of Jurisprudence and Legislation; Advocate and Notary of the illustrious Colleges of that Capital.

Calle de las Torres, No. 4, 2° Dra.

Telephone No. 4082.

81 *Attested Copy.*

I, Don Rafael Delgado Monreal, Advocate and Notary of the illustrious Colleges of Madrid, with domicile and fixed residence in this City, Hereby Attest that Don Vicente Coromina Marcellan, as the Representative of the Eastern Extension, Australasia and China Telegraph Company, Limited, has shown me the first copy of the Deed of Concession for the laying and working of a Submarine Telegraph Cable between Hongkong and Manila, with the request that I would make an attestated copy of the said document, which, copied verbatim, reads as follows:

No. 157.

Deed of Concession for the Laying and Working of a Submarine Telegraph Cable between Hongkong and Manila.

In the City and Royal Residence of Madrid, on the 30th March, 1898, before me, Don Antonio Turón y Boscá, Doctor of Civil, Canon and Administrative Law, Academic Professor of Jurisprudence and Legislation, Advocate and Notary of the illustr-ous Colleges of this Capital, with domicile and fixed residence in the same, after citation at the Office of the Ministry for the Colonies, there appeared

Of the One Part

The Most Excellent Señor Don Segismundo Moret y Prendergast, Minister for the Colonies, who as such intervenes as the Representative of the State, not exhibiting his personal Certificate of Citizenship, in consideration of his appearing in his official capacity exempting him, agreeably to the provisions of the Royal Order dated 23d March, 1875.

Y De Otra.

El Señor Don Vicente Coromina y Marcellán, mayor de edad, viudo, Agente y vecino de esta Corte, segun apparece de su Cedula Personal que exhibe de quinto clase, expedida en ocho de Enero del Corriente año, bajo el numero veintiseis mil setecientos cincuenta y seis de órden.

82 Su comparecencia tiene lugar en representacíón de la Sociedad "The Eastern Extension, Australasia and China Telegraph Company, Limited," domiciliada en Londres, segun el poder otorgado à su favor en la misma Ciudad de Londres, con fecha once de Julio de mil ochocientos noventa y cinco. ante el Notario Público, John Venn, por les Señores J. Denison Pender, Director, y F. E. Hesse, Secretario de la misma Campañía; del cual se me exhibe una traduccion que á continuacion se inserta para acreditar en todo caso la capacidad y facultades del apoderado Señor Coromina siendo su tenor como sigue:—

Traduccion.

Sepan todus por estas presentes dice: "The Eastern Extension, Australasia and China Telegraph Company, Limited," (La Compañía del Telegràfo de Extension Oriental, de Australasia y China, Limitada) cuyas oficinas estan en Winchester House en Ciudad de Londrer, en Inglatara, por la presenta constituye y nombra al Señor Vicente Coromina, de la Villa de Madrid, Agente mi Apoderado de la dicha Compañía en Madrid, para el objeto especial de representar officialmente á la Compañía é intervenir por ó en representación de la Compañía en todos los asuntos y cosas que en lo sucesivo puedan ocurrir entre el Gobierno de S. M. el Rey de España, ó S. M. la Reina Regente de España y la Compañía, con respecto al Cable de Luzón—Hong-Kong, establecido por la Compañia en cumplimiento de y en conformidad con una cierta concesion y Real Decreto para lo colocacion y explotacion del dicho cable y en general con relacion al establecimiento de Telegráfos en cualquiera otra de las Colonias ó dependencias Orientales de Su dicha Magestad Y cualquiera cosa que el dicho Agente y Apoderado haga legalmente en virtud de estas presentes, la dicha Compañia se conviene en ratificar y confirmar.

Finalmente, la Compañía revoca por la presente todos los Poderes dados anteriormente à cualquira persona para las objetos arriba mencionados.

And of the Other Part

Señor Don Vicente Coromina y Marcellán, of age, widower, Agent, and with domicile in this Royal Residence, as appears from his personal Certificate of Citizenship of the Fifth Class (which he exhibited) issued on the 8th January of the current year under the Number 26,756.

83 He put in his appearance as the Representative of "The Eastern Extension, Australasia and China Telegraph Company, Limited, whose domicile is in London, under the Power of Attorney executed in his favour in the aforesaid City of London, dated the 11th July, 1895, in the presence of John Venn, Notary Public, by Messieurs J. Denison Pender, Director, and F. E. Hesse, Secretary of the same Company, a translation of which he showed me as inserted herewith, in order to accredit in all cases the capacity and legal powers of the Attorney Señor Coromina, which reads as follows:—

Translation.

Know all Men by these Presents: That the Eastern Extension, Australasia and China Telegraph Company, Limited, whose Offices are at Winchester House, in the City of London, in England, doth hereby constitute and appoint Señor Vicente Coromina, of the City of Madrid, the Agent and Attorney of the said Company at Madrid, for the special purposes of officially representing the Company, and acting for or on behalf of the Company in all matters and things which may hereafter arise between the Government of his Majesty the King of Spain, or Her Majesty the Queen Regent of Spain and the Company, touching the Luzon-Hongkong Cable, established by the Company in pursuance of and in accordance with a certain Concession and Royal Decree for the laying and working of the said Cable: and generally in connection with the establishment of Telegraphs in any other of the Colonies or Dependencies of His said Majesty in the East; and whatsoever the said Agent and Attorney shall lawfully do by virtue of these Presents the said Company agrees to ratify.

Lastly, the Company hereby revokes all Powers of Attorney previously given to any person for the purposes above mentioned.

84 En testimonio de lo cual la dicha Compañía ha mandado que se fije al pié de esta su sello ordinario, hoy once de Julio, de mil ochocientos noventa y cinco.

El sello ordinario de "The Eastern Extension, Australasia and China Telegraph Company, Limited," se fijó aqui al preencia de

[Lugar de sello de la Compania.]

J. DENISON PENDER,
Director.

F. E. HESSE,
Secretary.

Yo, John Venn, de la ciudad de Londres, Notario Público, recibido y juramentado en debida forma, ejerciendo en la dicha Ciudad, Certifico y Doy Fe Por la Preente que el dia de la fecha de esta se fijó en el antecedente poder el sello ordinario de "The Eastern Extension, Australasia and China Telegraph Company, Limited," con arreglo à una resolucion de la Junta de Directores de la dicha Compañía, en su presencia y en la de John Denison Pender, Esquire, uno de los Directores, y Frederick Edward Hesse, Esquire, Secretario de la dicha Compañia, y que los dichos Director y Secretario, firmáron en mi presencia al pié de dicho poder, como dando testimonio de la fijacion de dicho sello,

En testimonio de lo cual he puesto aqui abajo mi firma y fijado mi Sello de Oficio, en Londres, hoy once de Julio, de mil ochocientos noventa y cinco.

[Lugar del sello.]

JOHN VENN,
Not. Pub.

Visto Bueno por legalizacion de la firma y sello que anteceden, que son al parecer las que usa Mr. John Venn, Notairo Público en esta Ciudad. Londres, once de Julio, ochocientos noventa y cinco.

URBANO MONTEJO (con rubrica),
El Consul-General.

[Lugar del sello.]

Numero dos mil nuvecientos cincuenta y uno.

Visto en este Ministerio de Estado para legalizar la firma de Don Urbano Montejo, C. G. en Londres.

Madrid, veintiocho de Septiembre, de mil ochocientos noventa y seis.

Por el Subsecretario el Encargado de la Cancilleria.

M. PASTOR Y BEDOYA (con rubrica).

[Lugar del sello.]

85 In Witness whereof the said Company hath hereunto caused its Common Seal to be affixed, this 11th day of July, 1895.

The Common Seal of the Eastern Extension, Australasia and China Telegraph Company, Limited, was hereunto affixed in the presence of

(Signed) J. DENISON PENDER, [SEAL.]
Director.

(Signed) F. E. HESSE,
Secretary.

I, John Venn, of the City of London, Notary Public, duly admitted and sworn, practising in the said City, do hereby certify and attest that on the day of the date hereof the Common Seal of the Eastern Extension, Australasia and China Telegraph Company, Limited, was affixed to the foreging Power of Attorney, in pursuance of a Resolution of the Board of Directors of the said Company, in my presence, and in that of John Denison Pender, Esq., one of the Directors, and Frederick Edward Hesse, Esq., the Secretary of the said Company; and that the said Director and Secretary signed in my presence at foot of the said Power of Attorney as witnessing the affixing of the said Seal.

In Witness whereof I have hereunto set my hand and affixed my Seal of Office, in London, this 11th day of July, 1895.

(Signed) JOHN VENN, [SEAL.]
Notary Public.

Examined and found correct for legalisation of the signature and seal as above, which appear to be those ordinarily used by Mr. John Venn, Notary Public in this City. London, 11th July, 1895.

[SEAL.] URBANO MONTEJO,
Consul-General (with rubric).

No. 2951.

Examined at this Ministry of State for the purpose of legalizing the signature of Don Urbano Montejo, Consul-General in London.

Madrid, 28th September, 1896.

By the Under Secretary the Chargé d'Affaires of the Chancellery.

[SEAL.] M. PASTOR Y BEDOYA (with rubric).

86 Continua La Traduccion,

Fuera dice: Fechado el once de Julio, de mil ochocientos noventa y cinco. The Eastern Extension, Australasia and China Telegraph Company, Limited, Poder al Señor Vicente Coromina, para representar á la Compañia en Madrid, en relacion con el Cable de Luzón-Hong-Kong, y otros negocios telegráficos. El Jefe del Archivo, Biblioteca é Interpretacion de Lenguas del Ministerio de Estado: Certifico que la antecedente traduccion esta fiel y literalmente fecha de un poder, en englés, que para este efecto si me ha exhibidio.

Madrid, cinco de Octubre, de mil ochocientos noventa y seis.

MANUEL DEL PALACIO (con rubrica).

[Hay un sello de la Interpretation de Lenguas del Ministerio de Estado.]

Asi resulta de su original, que á este efecto se me ha exhibido, y al que en todo caso me remito. Y teniendo á mi juicio por todo lo expuesto, ambos Señores comparecientes, segun intervenien, capacidad legal, que aseguran no les está limitada, para formalizar la presente Escritura—

Manifiestan,

Primero. Que con el fin de prolongar hasta Manila "Islas Filipinas" el cable telegráfico submarino establecido entre Hong-Kong y Bolinao, de la Isla Luzón, la Compañia "The Eastern Extension, Australasia and China Telegraph Company, Limited," presentó las tres Proposiciones siguientes:

I. Establecimiento del nuevo cable mediante entregea por el Estado de una subvencion anual de cinco mil libras esterlinas durante veinte años.

II. Prorroga del monopolio del Cable actual cuya concesion termina el año mil nuevecientos veinte, por veinte años más; extension del privilegio de amarre á todas las posesiones
88 españolas del Pacificio, franquicia de Derechos de Aduanas al Cable y Material de Estacion: exencion de contribucions locales á los empleados y á las propiedades de la Compañía, asimilando los primeros á los del Cuerpo de Telegráfos del Estado; y concesion de terrenos en Manila para edificar par cuenta de la Compañia la nueva estación.

Las dos proposiciones anteriores tienen fecha veintiseis de Octubre, de mil ochocientos noventa y seis.

III. Y en once de Febrero, de mil ochocientos noventa y siete se presentó la última limitando la peticion de los privilegios de la segunda y sustituyendolos por una subvencion anual de dos mil quinientas libras durante veinte años, la que posteriormente en propuesta

87 The translation, continuing,

Further says: Dated 11th July, 1895. The Eastern Extension, Australasia and China Telegraph Company, Limited-Power of Attorney in favour Señor Vicento Coromina, for the purpose of representing the Company in Madrid, in relation to the Luzon Hongkong Cable, and other telegraph matters. The head of the Archives, Library and Translation of Languages Department of the Ministry of State.—I hereby certify that the preceding translation of a Power of Attorney, drawn up in English, submitted to me for this purpose, is a faithful and literal one.

Madrid, 5th October, 1896.

MANUEL DEL PALACIO (with rubric).

[Seal of the Ministry of State Department for the Translation of Languages.]

This is according to the original, which has been exhibited to me, and to which in every case I refer. And both appearing parties having in my opinion the necessary legal capacity, which they assert to have been unrestricted, accordingly intervene for the purpose of executing the present Deed—

They declare

Firstly. That with the object of extending to Manila in the Philippine Islands the Submarine Telegraph Cable laid between Hongkong and Bolinao, in the island of Luzon, The Eastern Extension, Australasia and China Telegraph Company, Limited, submitted the three following Proposals—

I. Laying the new Cable upon the State paying an annual subsidy of £5,000 (five thousand pounds) sterling for a period of 20 years.

89 for all the Spanish possessions in the Pacific; freedom from Customs Dues for the Cable and Station Stores; exemption from local taxes for the employés and property of the Company, assimilating the former to the Telegraph Corps of the State; and the granting of land in Manila, on which to build the new station at the Company's expense.

II. Extension of the monopoly of the present Cable, which expires in 1920, for 20 years longer; extension of exclusive landing rights

The two preceding Proposals bear the date of 26th October, 1896.

III. And on the 11th February, 1897, the last Proposal was submitted, limiting the demand for the exclusive privileges of the second proposal, and substituting for them an annual subsidy of £2,500 (two thousand five hundred pounds) for 20 years, which was subsequently,

de diez y siete de Diciembre, de mil ochocientos noventa y siete, aumentaron hasta tres mil libras para el mismo caso.

Segundo. Que vistas dichas Proposiciones, el Ministro de Ultramar manifestó al representante de la expresada Compañía en Madrid que podria aceptarse la segunda relativa tan solo à la concesion de privilegios, pero quedando siemper el Estado dueño de rescatar dischos privilegios en cualquier momento del periódo de viente años de su convenio, abonando en tal caso a la Compañía cinco mil libras anuales por el plazo que quedará de la misma; y que no podia concederse la exencion de Derechos de Aduanas en la extension que se pretendia.

Tercero. Que la Compañía "The Eastern Extension, Australasia and China Telegraph Company, Limited," acceptó en principio dicha proposición de S. E. pero sosteniendo en todo caso el privilegio de prorroga por veinte años de la actual Concesion del Cable.

Cuarto. Que como consecuencia de los antecedentes dichos, se redactaron dos proyectos de Decreto para la Concesion del nuevo Cable hasta Manila, sometiendose par S. E. à eleccion del Consejo de Ministros, cuyo Consejo, de acuerdo, con el Señor Ministro de Ultramar, optó por el proyecto de Concesion de los privilegios pedidos por la Compañia sin subvencion alguna y con el derecho del rescate por el Estado del de amarre de cables en nuestras posesiones del Océano Pacifico, mediante la entrega de cinco mil libras esterlinos anuales por el periodo que quedase de los veinte años contados à partir de la fecha en que se estableza el neuvo servicio.

90 Quinto. Que aceptada por la Companiá dicha Proposicion asi coma la neuva redacion del pliego de condiciones, que, analogo al de la primitiva Concesion habrà de servir de base á la presente, se discutiò sobre la condicion relata á la franquica de la correspondencia telegràfico oficial po rel neuvo Cable, reclamando el Señor Linistro de Ultramar que dicha franquicia fuese total durante los primeros veinte años de la explotacion del servicio, ofreciendose depues por la Compañía tan sol el cobro de la cuarte parte de las tarifas por dicha correspondencia, é insistiendo sel Señor Ministro propuso la franquicia complete durante los diez primeros años; el cobro de la cuarte parte de los tarifas, por los diez años siguientes; y el de la mitad del importe de los cablegramas oficiales depuses, hasta el termino de la Concesion.

Sexto. Que aceptado esta ùltima Propuesta por la Compañia, se sometiò àla aprobacion de S. M. el projecto de Decreto y pliego de condiciones para la Concesion, establecimiento y exploitaciôn del neuva Cable Telegràfico Submarino entre Hongkong y Manila, cuyo Real Decreto y Pliego de Condiciones se insertan à continuacion siendo del tenor literal siguiente:—

in the Proposal of the 17th December, 1897, increased to £3,000 (three thousand pounds) for the same case.

Secondly. That, after having considered the Proposals, the Minister for the Colonies declared to the above mentioned Company's Representative in Madrid that he would be able to accept the second Proposal referring only to the concession of exclusive privileges, but the State reserving the right of redeeming the said privileges at any period of the twenty years of its Convention by paying the Company in that case £5,000 (five thousand pounds) per annum for such portion of the term as might remain unexpired; and that he could not grant the exemption from Customs Dues to the extent claimed.

Thirdly. That the Eastern Extension, Australasia and China Telegraph Company, Limited, accepted in principal the aforesaid proposal of His Excellency, but insisted in any case on the extension of the exclusive privilege of the Concession of the present Cable for 20 years further.

Fourthly. That in consequence of the circumstances stated above. two Draft Decrees were drawn up for the Concession of the new Cable to Manila, His Excellency submitting them to the Council of Ministers for its decision, which Council, in accord with the Minister for the Colonies, decided in favour of the plan of granting the Concession *of* the exclusive privileges asked for by the Company without any subsidy, the State reserving to itself the right to redeem the exclusive landing rights in our possessions in the Pacific Ocean by the payment of £5,000 (five thousand pounds) sterling per annum for the unexpired period of the twenty years—reckoning from the date of the opening of the new service.

91 Fifthly. That the Company having accepted the said Proposal, as well as the wording of the new Schedule of Conditions—which, similar to that of the original Concession, shall serve as the basis of this one—the question relative to the free transmission of official telegraph correspondence over the new Cable was discussed, the Minister for the Colonies demanding that it should be entirely free for the first 20 years of the working of the service. The Company then offered to charge only a quarter of the (ordinary) tariff rates for the aforesaid correspondence, and, upon the Minister insisting, it proposed it should be entirely free for the first ten years; one-quarter of the (ordinary) tariff rates for the ten succeeding years, and, after that, half rates should be charged for official telegrams up to the expiration of the Concession.

Sixthly. That the Company having accepted this last Proposal, the Draft Decree and Schedule of Conditions for the Concession, laying and working of the new Submarine Telegraph Cable between Hongkong and Manila were submitted to Her Majesty for Her approval—which Royal Decree and Schedule of Conditions are set forth below and read as follows:

Real Decreto.

De conformidad con lo propuesto por el Ministro de Ultrimar, de acuerdo con el Consejo de Ministros.

En nombre de mi Augusto Hijo el Rey Don Alfonso XIII., y como Reina Regente del Reino.

Vengo en decretar lo signente:

Artículo 1°.

Se autorizo á Don Vicente Coromina y Marcellán, en nombre y representaciön de la Compania "The Eastern Extension, Australasia and China Telegraph Company, Limited," domiciliada en Londres, y concesionaria de la explotaciön del Cable Telegráfico Submarino establecido entre Hongkong y Bolinao—de la Isla de Luzón, en Filipinas—para cortar el espresado cable serca de Bolinao, y prolongarle hasta Manila, estableciendo la nueva Estación en dicha Capital.

Artículo 2°.

El nuevo cable deberá quedar tendido y dispuesto para recibir la correspondencia oficial del Gobierno, en el plazo maximo de treinta dias, á contar de la fecha en que se firme el Contrato relativo á presente concesión.

92 Artículo 3°.

El tendido del Cable, el amarre en Manila, y su explotación, se harán por cuenta y riesgo de la citada Compañia, mediante la Concesión á la misma de los siguientes privilegios:—

Primero. Concesión de una prórroga de veinte años que terminará el dia ocho de Mayo, de mil nuevecientos cuarenta, del monopolio per dicha Compañia de la explotación del cable entre Hongkong y Manila, sin que hasta dicha fecha pueda establecerse otra linea telegráfica submarine entre los expresados puntos.

Segundo. Extensión del privilegio de amarre durante un periodo de veinte años, de los cables que se concedan para unir todas las posesiones españolas del Océano Pacifico y para enlazarles con los demás países, contándose dicho período desde la fecha en que se establezca el servicio del nuevo cable.

Tiercero. Asimilación de los empleados de la Compañia á los de Telegráfos del Estado, para que gozen de los mismos privilegios, y exención á los propiedades de la Compañia de contribuciones é impuestos locales.

Royal Decree.

In conformity with the proposal made by the Minister for the Colonies, in accord with the Council of Ministers:

In the name of my August Son, King Don Alfonsi the XIII., and as Queen Regent of the Kingdom,

I hereby decree as follows:

Article 1.

Don Vicente Coromina y Marcellan is hereby authorized in the name and as the representative of The Eastern Extension, Australasia and China Telegraph Company, Limited, which has its domicile in London, and holds the Concession for the working of the Submarine Telegraph Cable connecting Hongkong with Bolinao—in the Island of Luzon, in the Philippines—to cut the aforesaid Cable near Bolinao, and to extend it to Manila, establishing the new Station in that Capital.

Article 2.

The new Cable shall be laid and ready to transmit the official correspondence of the Government, within the maximum period of thirty days reckoning from the date on which the Contract relative to the present Concession is signed.

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Article 3.

The laying of the Cable, its landing at Manila, and its working, shall be carried out at the expense and risk of the above mentioned Company, in exchange for the Concession to the same of the following privileges:

Firstly. The Concession of an extension for 20 years (which will expire the 8th May, 1940) of the monopoly enjoyed by the aforesaid Company for the working of the Hongkong-Manila Cable, until which date no other submarine telegraph line can be laid between the points mentioned.

Secondly. The extension of the landing rights for a period of 20 years in respect of the Cables, the Concession for which is granted for the purpose of joining all the Spanish Possessions in the Pacific Ocean, and of connecting them with other Countries—such period to be reckoned from the date on which the new Cable is opened for working.

Thirdly. The assimilation of the Company's employés to those of the State Telegrams, so that the former may enjoy the same privileges; and the exemption of the Company's property from taxes and local imposts.

Artículo 4°.

El Gobierno podrá en todo momento, cuando lo estime conveniente, y dentro del período de veinte años á que se refiere el apartado segundo del artículo anterior, rescatar el privilegio de establecimiento de Cables en nuestras islas del Pacífico, mediante el payo anual á la Compañia de cinco mil libras esterlinas por el número de años que falten hasta terminar el expresado periodo, pero continuando la Compañia en el uso del concedido en el apartado primero, sin derecho al percibo de subvencion alguna.

Artículo 5°.

La nueva estación del cable se construirá en Manila por cuenta de la Compañia, en terrenos que se le concederán al efecto.

94 Artículo 6°.

Además de los prescripciónes establecidas en los Articulos precedentes, regiràn para la concesion y explotación del nuevo Cable los condiciones que se estipulan en el pliego adjunto al presente Decreto.

Dado en Palacio, á veintiocho de Marzo, de mil ochocientos noventa y ocho.

MARIA CHRISTINA.

El Ministro de Ultramar,
SEGISMUNDO MORET.

96 *Pliego De Condiciones Para el Establecimiento y Explotación de un Cable Telegráfico Submarino entre Hongkong y Manila.*

1*a*. El espresado cable telegráfico se corstruira con los condiciones necesarias para asegurar la debida explotaciôn; se empleará el sistema de aparatos que el concesionario juzgue mas convenientes, modificando el actual segùn crea más acertado, y tendra en la estaciôn principal los de pruebas que asimismo sean necesarios.

2*a*. En la proximidad de los costas se emplearán los cables de costa é intermedio en la longitud conveniente para garantizar la seguridad de las comunicaciones.

3*a*. Para todos los efectos legalse, el servicio del cable se considerará como el de una obra de utilidad publica.

4*a*. Los Telegrafistas y demás empleados para el servicio del Cable seran elegidos por el Concesionario, pero quedando sujetos en el ejercicio de sus funciones á las disposiciones establecidas en los Reglamentos de Telêgrafos de Filipinas. Ademas de estas, el

Article 4.

The Government may at any time, whenever it deems it expedient, and in the period of the 20 years referred to in the second paragraph of the preceding Article, redeem the privilege of establishing Cables in our Islands in the Pacific by the annual payment to the Company of £5,000 (five thousand pounds) sterling for the years which may then remain unexpired as regards the period abovementioned; but the Company shall continue to enjoy the privilege granted in the first paragraph, without the right of receiving any subsidy.

Article 5.

The new Cable Station shall be erected at Manila, at the Company's expense, on land which will be granted to it for the purpose.

95

Article 6.

In addition to the prescriptions laid down in the preceding Articles, the conditions for the Concession and working of the new Cable shall be those set forth in the Schedule of conditions annexed to the present Decree.

Given at the Palace, March 28th, 1898.

(Signed) MARIA CRISTINA.

SEGISMUNDO MORAT.

97 *Schedule of Conditions for Laying and Working a New Submarine Telegraph Cable between Hongkong and Manila.*

1. The above-mentioned Cable shall be made in the manner necessary to ensure its proper working; that Instrument System which the Concessionnaire may deem most expedient shall be used, modifying the present one as he thinks best; and at the Chief Station such Testing Instruments shall be kept as may be necessary for the same.

2. In the neighborhood of the Coasts, the Coast and intermediate Cables shall be used in such proportion as to ensure the security of the means of communication.

3. For all legal purposes the service of the Cable shall be considered as a work of public utility.

4. The Telegraphists and other employés for the Cable service shall be appointed by the Concessionnaire; but they shall be subject in the exercise of their functions to the Rules established in the Regulations of Telegraphists in the Philippines. In addition to these the Government shall reserve to itself the right of organ-

Gobierno se reservará el derecho de organizar en el cable el servicio de intervención que más convenga, en armonia con las disposiciones vigentas en la Administración. En tal concepto, los telegramas recibidos y los que se presenten para su trasmision, serán entregados, á los funcionarios del Estado, que serán los intermediarios entre el público y los agentes del concesionario.

5a. El Gobierno podrá establecer, cuando lo crea conveniente, las lineas telegráficas aéreas y submarinas que en las islas Filipinas sean necesarias para la administración y servicio público de aquellas provincias.

6a. El Gobierno y la Compañia aplicaran en la explotación del cable el reglamento anejo al convenio internacional telegráfico vigente.

7a. Si dejára de tenderse el Cable en el plazo de trienta dias estipulados en el decreto, ó si por causas dependientes del Concesionario resultase inútil para prestar servicio en el referido plazo, se entenderá caducada la concesión con pérdida del depósito correspondiente. Si se probase sin embargo que dichas causas fueron ocasionadas por roturas en el cable ó por accidentes que no pudieron prevenirse en la immersion, dicho plazo será de tres meses ó mayor si el buque
98 que tiende el cable se inutilizare por completo. En el caso de que los conductores se inutilicen, aunqúe sea por causas independientes del concesionario en el término de duración del contrato, el concesionario se obliga à reemplazarlos de modo que de nuevo quede expedita la comunicación en un plazo que no excederá de un año. Si trascurrido este tiempo no quedase establecido el servicio se entenderá caducada la concesión.

8a. El concesionario admitirá á bordo del buque que tienda el cable, al comisionado ó comisionados del Gobierno para inspeccionar los operaciones de fondeo, amarre y recepción del cable. Un buque del Estado asistirá á los trabajos de tendido y colocación del cable, y en caso necesario marcará le derrota con arreglo al trazdo elegido, y comunicará con la costa cuando los circunstancias lo exigieren.

9a. Cuando se interrumpa total ó parcialmente el servicio de la línea por mas de un mes, á consecuencia de accidentes mercantiles, de diferencias entre la Empresa y sus empleados, ó por efecto de cualquier causa imputable á negligencia ó mala organización y regimen de la misma Empresa, el Gobierno podrá hacerse cargo del Cable y percibir los ingresos de su explotación, los cuales serán entregados á la Empresa cuando corresponda, deducidos previamente los gastos de Administracion Oficial y los de conservación, reparación o modificación y cambio de aparatos que hayan ocurrido. Se entenderá caducada la Concesión, si la interrupción del servicio excediese de un

ising for the Cable service such system of supervision as it deems best, in accord with the Rules in force in this Department. Telegrams received and those presented for transmission will therefore be handed over to the Government functionaries, who will be the intermediaries between the public and the Concessionnaire's Agents.

5. The Government may construct, whenever it deems it expedient to do so, such Aerial and Submarine Telegraph Lines in the Philippines as may be required for the administration and public service of those provinces.

6. The Government and the Company in the working of the Cable shall apply the Regulations annexed to the International Telegraph Convention in force.

7. In the event of failing to lay the Cable within the period of 30 days specified in the Decree, or should the Cable through causes within the control of the Concessionnaire not be ready for service within the period mentioned, it shall be understood that the Concession expires, with the loss of the respective caution-money. Should it, however, turn out that the causes above alluded to arose from the Cable breaking, or from accidents in the laying
99 which could not have been foreseen, this said period shall be increased to three months, or more, in the event of the vessel laying the Cable being completely disabled. Should the conductors become useless during the period of the contract, although from causes beyond the control of the Concessionnaire, he is bound to replace them so as to re-establish communication within one year. In the event of this time expiring without the service being restored, it is understood that the Concession expires.

8. The Concessionnaire shall allow the Delegate or Delegates of the Government to be on board the vessel which lays the Cable, for the purpose of examining the operations of the laying, the landing and the taking over of the Cable. A Government vessel shall be present at the work of the laying and establishment of the Cable, and in case of need shall mark out the route agreeably to the track chosen, and communicate with the shore when circumstances render it necessary.

9. Whenever the service of the line may be totally or partially interrupted for more than one month—owing to commercial accidents, disputes between the enterprise and its employes, or from any cause attributable to the bad organisation and management of the aforesaid enterprise—the Government shall have the right to take charge of the Cable and to receive the proceeds of its working, which shall be handed over to the enterprise at the proper time, after deducting the costs of official administration and those of maintenance, repair or alteration in and change of instruments which may have been made. It shall be understood that in the

año, á partir de la notificación oficial hecha á la Empresa, quedando á beneficio del Gobierno los aparatos y demas material utiliable, como parte de compensación de los perjucios que se originasen al país con la total interrupción del servicio.

10*a*. La correspondencia oficial del Gobierno tendrá la prioridad en todos los casos; gozerá de franquicia para su trasmisión por el cable con arreglo á las instrucciones vigentes de servicio en las islas Filipinas, durante los diez primeros años de la presente concesión; devengará la cuarta parte del importe establecido en la tarifa, durante los diez años siguientes, y devenngará la mitad del indicado importe, después de dicho segundo periódoy hata el término de la concesión.

11*a*. El concesionario fijará las tarifas á que haya de sujetarse la correspondecia privada que se curse por el cable, cuyos tipos máximos no podrón exceder de los adoptados por las Compañias telegráficas cuyos cables estén en análogas condiciones.

100 12*a*. La contabilidad por ambas partes, se llevará con arreglo á las disposiciones establecidas en el Convenio Telegráfico y Reglamento Internacional vigentes.

13*a*. El concesionario acreditará en Madrid y Manila representantes debidamente autorizados que intervengan en los asuntos ó gestiones que puedan tener lugar entre la Administración Española y el expresado Concesionario. Estas cuestiones deberán decidirse por los trámites que las dispiciones vigentes establezcan para la inteligencia y efectos de los contratos públicos de Ultramar.

14*a*. El concesionario prestará, á disposición del Ministro de Ultramar, una fianza de cien mil pesetas, en metálico, ó en valores públicos del Estada, para responder del cumplimiento de las condiciones del establecimiento del cable. Dicho fianza le será devuelto cuando se reciba el Ministerio la certificación del acta de recepción de dicho servicio, aprobada por el Gobernador-General de las islas Filipinas.

15*a*. Hecha la adjudicaciòn de este servicio, se elevarà el contrato à escritura pùblica, siendo de cuenta del Concesionario los gastos de ella y de dos copias de las misma, una de los cuales se entregarà en el Ministerio de Ultramar.

16*a*. La inobservancia por parte del concesionario de cualquiera de las cláusulas consignadas en el Real Decreto de concesion del cable y en este pliego, será suficiente para considerarla nula y de ningún valor.

Aceptado en nombre de la Compañia "The Eastern Extension, Australasia and China Telegraph:"

VICENTE COROMINA.

event of the service continuing interrupted for more than a year—reckoning from the notification officially made to the enterprise—the Concession lapses, the instruments and other useful stores being forfeited to the Government as partial compensation for the prejudice which the country may suffer from the total interruption of the service.

10. In all cases the Government official correspondence shall enjoy the privilege of priority of transmission by the Cable; and agreeably to the Service Regulations at present in force in the Philippine Islands, it shall be free of charge during the first ten years of the present Concession; for the ten years following it shall be paid at the rate of one-fourth the ordinary tariff, and at half the same during the aforesaid second period and until the expiration of the Concession.

11. The Concession-aire shall fix the tariff for the private correspondence transiting over the Cable, the maximum rates for which shall not exceed those adopted by telegraph companies whose cables are similarly circumstanced.

101 12. The accounts by both parties shall be kept agreeably to the rules laid down in the International Convention and Regulations in force.

13. The Concession-aire shall have in Madrid and Manila duly authorised representatives who can deal with matters or questions which may arise between the Spanish Administration and the aforesaid Concession-aire. These questions shall be settled by the modes which the regulations in force prescribe for the interpretation and purposes of public Colonial Contracts.

14. The Concessionnaire shall deposit, at the disposal of the Minister for the Colonies, a caution-money of 100,000 (one-hundred thousand) pesetas, in cash or Public Debt Funds, as a guarantee for the fulfilment of the conditions for the laying of the Cable. The aforesaid caution-money shall be returned to the Concessionnaire when the certificate of the act of the taking over the said service is received at the Ministry, approved by the Governor-General of the Philippine Islands.

15. The adjudication of this service having been made, the Contract shall be raised to a Public Deed, the cost of this and of two copies of same—one of which shall be handed in at the Ministry for the Colonies—being at the expense of the Concessionnaire.

16. The failure by the Concessionnaire to observe any one of the clauses set forth in the Royal Decree of the Concession of the Cable and in this schedule shall suffice to render it null and void.

Accepted in the name of the Eastern Extension, Australasia and China Telegraph Company.

VICENTE COROMINA.

Aprobada por S. M., Madrid, veintiocho de Marzo, de mil ochocientos noventa y ocho.

S. MORET.

Los anteriores Real Decreto y Pliego de Condiciones corresponden literalmente con sus respectivos originales, à que yo el Notarie, me remito.

Septimo. Que con motivo de haberse terminado la construccion y establecimiento de los tres Cables Telegràficos Submarinos que unen las Islas de Luzòn, Panay, Negros, y Cebu, del Archipielago de las Filipinas de que tambien es Concesionaria la Compañia "The Eastern Extension, Australasia and China Telegraph Company, Limited," y haberse recibido el acta correspondiente aprobada por el Gobernado-General de Filipinas, se dispuso por Real Orden de Treinta de Marzo corriente, la devolucion del depósito de cien mil pesetas en metálico que dicha Compañia habia constituido para responder del expresado servicio; en atencion á lo cual y exigiendosele ahora la misma cantidad para garantizar el establecimiento del Cable entre Hong-Kong y Manila, objeto de esta Escritura, Don Vicente Coromina, en representaciôn de *de* la Compañia Concesionaria, ha solicitado del Señor Ministro de Ultramar que dichos cien mil pesetas depositados para garantizar el establecimiento de los tres indicados Cables, queden ahora afectas á responder del presénte Contrato; acordandose asi por otra Real Orden de igual fecha que la anterior.

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Octavo. Que estandose en el caso de formalizar el correspondiente Contrato, en cumplimiento de lo prevenido, los Señores comparecientes, segun intervienen, lo llevan á efecto por medio del presente instrumento público que otorgan bajo los siguientes:—

Condiciones.

Primera. La Sociedad domicilada en Londres, "The Eastern Extension, Australasia and China Telegraph Company, Limited," que en este acto representa Don Vicente Coromina, en virtud del poder inserto al principio, acepta la concession para el establecimiento y explotacion de un Cable Telegráfico Submarino entre Hong-Kong y Manila, en el Archipiélago Filipino, cuyo servico habrá de verificarse con estricta sujeción al Pliego de Condiciones aceptado y firmado por dicho Señor Coromina, como representante de aquella Compañia, y aprobado por S. M., al otorgar la Concesion en virtud del Real Decreto, que con dicho pliego queda inserto y se tiene aqui por reproducido en todas sus partes, y que tambien ha sido aceptado por el propio Señor Coromina.

Segunda. En garantia del cumplimiento de los condiciones, estipuladas, el Señor Coromina, como tal representante de la Compañia "The Eastern Extension, Australasia and China Telegraph Company, Limited,' deja afectar á disposicion del Excmo. Señor

Approved by Her Majesty, Madrid, 28th March, 1898.

S. MORET.

The preceding Royal Decree and Schedule of Conditions correspond literally with their respective originals, to which I, the Notary, refer.

Seventhly. Having regard to the fact of the construction and laying of the three Submarine Telegraph Cables connecting the islands of Luzon, Panay, Negros and Zebu, in the Philippine Archipelago—of which the Eastern Extension, Australasia and
103 China Telegraph Company, Limited, is also the Concession-
-aire—being completed, and the respective Deed approved by the Governor-General of the Philippines having been received, it was decided, by Royal Order dated 30th March instant, to return the deposit of 100,000 pesetas made in cash by the aforesaid Company as a guarantee in respect of the above-mentioned service; looking to the fact that the same amount is now required as a guarantee for the laying of the Cable between Hongkong and Manila, the object of this Deed, Don Vicente Coromina, as the representative of the Concessionary Company, asked the Minister for the Colonies now to apply the said 100,000 pesetas deposited as a guarantee in respect of the three Cables mentioned above, to the present Contract, which was granted by another Royal Order of same date as the preceding one.

Eighthly. That being ready to execute the respective Contract in due and proper form, in fulfilment of what has been settled above, the parties thereto accordingly intervene for the purpose of carrying it into effect under the following conditions:—

Conditions.

First. The Company domiciled in London, "The Eastern Extension, Australasia, and China Telegraph Company, Limited"—represented in this Act by Don Vicente Coromina, in virtue of the power of Attorney, inserted in the beginning of the same—hereby accepts the Concession for the laying and working of a Submarine Telegraph Cable between Hongkong and Manila, in the Philippine Archipelago, which service will have to be carried out strictly subject to the Schedule of Conditions accepted and signed by the said Señor Coromina, as the representative of that Company; and the execution of the Concession approved by Her Majesty, in virtue of the Royal Decree, which, with the said Schedule, is embodied herewith, reproduced in all its parts, and which has also been accepted by him, the aforesaid Señor Coromina himself.

Second. As a guarantee of the fulfilment of the Conditions stipulated, the Señor Coromina, as the representative of "The Eastern Extension, Australasia, and China Telegraph Company, Limited," allows the hundred thousand pesetas which the aforesaid Company

Ministro de Ultramar los cien mil pesetas que en efectivo metálico consignó la misma Compañia para responder de la construccion y establecimiento de los tres Cables Submarinos que unen las Islas de Luzón, Panay, Negros y Cebu, de que tambien fué Concesionaria segun lo consignado en el parrafo septimo de la presente Escritura.

104 Tercero. El Excmo. Señor Ministro de Ultramar, en representación del Estado, asegura que este contrato se hara efectivo á la Compañia concesionaria, siempre que por parte de esta se cumplan todas y cada una de las condiciones comprendidas en el mismo.

Cuarto. La Sociedad Concesionaria queda sometida á las decisiones de los Tribunales que la Administracion dicte ó designe para cualquier actuacion ó gestion que pudiera dimanar de esta Escritura.

Tal es el Contrato que formalizan los Señores comparecientes, segun intervienen y á cuyo cumplimiento, y estricta observancia por lo que respectivamente les incumbe, se obligan en legal forma.

Asi lo dicen y otorgan el Exc. Señor Don Segismundo Moret y Don Vicente Coromina, Siendo testigos instrumentales Don Martin Pedroche Mayorga y Don Domingo Garcia Fernandez, de esta vecindad, y sin impedimento legal que obste á su testimonio.

Y yo, el Notario, hago constar haber fecho los siguientes.

Advertencias Legales.

Primera. Que de esta Escritura debe presentarse copia dentro del termino de treinta dies en la oficina de liquidacion del impuesto de dorechos reales y trasmision de bienes de Madrid, para satisfacer a la Hancienda el que devengue por este contrato, bajo los multas establecidas caso contrario en la legislacion vigente.

Segunda. Tambien adverti a los Señores otorgantes y testigos el derecho que la Ley les concede para leer por si mismos esta Escritura y habiendolo renunciado loverifiqué yo el Notario integramente y en alta voz ratificandose los primeros en sucontenido y firmando en union del los testigos.

De cuanto queda consignado en el presente instruments público y del conocimiento del los Señores otorgantes yo el infrascrito Notario doy fé: S. Moret—Vicente Coromina—Domingo Garcia—Martin Pedroche. (Signado) Antonio Turón. Es primer Codia

106 exacta de su escritura matriz numero ciento cincuenta y site de mi protocolo corriente de instrumentos públicos. La expido para el Ministerio de Ultramar en un pliego de la clase primera numero setecientos cuarenta y ocho y en siete de la decima tercera numeros del ochenta y curatro mil trescientos trece al presente todos

deposited in cash as caution-money for the construction and laying of the three Submarine Telegraph Cables connecting the islands of Luzon, Panay, Negros and Zebu, of which it was also the Concessionnaire, to be placed at the disposal of the Most Excellent Minister for the Colonies, as set forth in Paragraph 7 of the present Deed.

105 Third. The Most Excellent Minister for the Colonies, as the representative of the State, will ensure this contract shall be kept with the Company, provided always that it fulfils all and each of the conditions comprised in the same.

Fourth. The Concessionary Company is subject to the decisions of the Tribunals invoked or specified by the Administration for any action or matter which may arise out of this Deed.

Such is the Contract which the parties thereto execute in due form, intervening accordingly, and, as devolves upon them, respectively bind themselves to its due fulfilment and strict observance, in due legal form.

Thus declare and execute the Most Excellent Señor Don Segismundo Moret and Don Vicente Coromina, the attesting witnesses being Don Martin Pedroche Mayorga and Don Domingo Garcia Fernandez, domiciled in this City, and without there being any legal obstacle to their testimony.

And I, the Notary, hereby declare to have given the following.

Legal Notifications.

Firstly. That a copy of this deed has to be submitted within thirty days at the office for the collection of Dues for Royal Taxes, and Transfer of Real Property, Madrid, so that the needful may be done in paying the Treasury the proper dues on this contract, under the penalties laid down by the laws in force against defaulters.

Secondly. I also notified to the contracting parties and witnesses that the law gave them the right of reading this Deed themselves, which, they waiving, I, the Notary, read it through aloud, the former ratifying its contents and signing it together with the witnesses.

I, the undersigned Notary, hereby attest all that is set forth in the present public instrument, and of the knowledge of the parties executing it: Señor Moret, Vicente Coromina, Domingo Garcia, Martin Pedroche. (Signed) Antonio Turon. This is the first true
107 copy of the Original Number 157, in my current Register of Public Instruments. I draw it up for the Office of the Ministry for the Colonies on a sheet of the First Class, Number 748,

correlativos, y la signo, firmo y rubrico, en Madrid, al siguiente dia de su otorgamiento. Sobre raspado este, Entre lineas—en el termino de duracion del contrato, el Concesionario Todo vale.

(signado) ANTONIO TURÓN, con rubrico.

(Hay un sello de la Notaria.)

NOTA.—Examinado este documento se declara no sujeto con arreglo al articulo treinta y seis del Reglamento. Por honorarios de nota ha satisfecho hoy cincuenta centimos, segun carta se pago numero trescientos treinta y neuve de Intervención. Madrid, cinco Abril, mil ochocientos noventa y ocho. El Abogado del Estado, Joaquin Souto, con rubrica. Hay un sello del impuesto de derechos reales.

Corresponde á la letra con su original, que devuelvo a Don Vicente Coromina, de lo que doy fé y al que me remito, y á instancia de dicho Señor exhibente yo Don Rafael Delgado Monreal, como sustituto de mi compañero don Antonio Turón y Boscá, expido el presente testimonio en un pliego de undecima clase, numero treinta y cuatro mil trescientos sesenta y nueve y en seis de la decima tercera numeros, del ochenta y seis mil doscientos ochenta y ocho al presente, todos correlativos, que signo, firmo y rubrico, en Madrid, ádoce de Abril, de mil ochocientos noventa y ocho.

Entre lineas—é intervenir por ó en representación de la Compañia, ó S. M. la Reina Regente de España—Sobre raspado—concesion—todo vale.

[L. S.] RAFAEL DELGADO MONREAL.

108 *Royal Order.*

Dated 21st April, 1898.

109 Ministerio de Ultramar:

El Señor Ministro de Ultramar, por Real Orden de esta fecha, dice al Gobernador-General de las Islas Filipinas lo siguiente: "Por telegrama de 13 del corriente mes y atendiendo á instancia, del representante en Madrid de la Compañía concesionairo del cable telegráfico submarino desde Hongkong á Manila 'se dispuso' que se sirvierá autorizar á V. E. la instalacion en Malate de una estacion sucursal de la del Estado—en la de los cables de Visayas y de Hongkong, y siendo en efecto conveniente el establecimiento de dicha Sucursal de la de telegráfos del Estado en Manila por facilitar el cambio y la debida organizacion del servicio, y conviniendo asimismo el dar á los agentes de la indicada Compañía de cables toda clase de facilidades atendibles en beneficio de dichas comunicaciones, evitandos los dificultades que las Autoridades municipales puedan presentar. Per el indicado obejto, S. M. el Rey (q. D. g.) y en su nombre la Reina Regente del Reino, se ha servido disponer que se comfirme el antedicho telegrama y que por el Gobierno-General se ordene y

signing, sealing and rubricking the same, in Madrid, the day after its execution.

(Here follows note of corrections of clerical errors, &c.)

(Signed) ANTONIO TURÓN, with rubric.
(Here there is a Notarial Seal.)

NOTE.—After being examined this document is declared not liable (to tax) agreeably to Article 36 of the Regulations. In fees for noting I have this day paid 50 centimes, as per Office Receipt No. 339, Madrid, 5th April, 1898. Joaquin Souto, the Advocate of the State, with rubric. Here there is a stamp of the Royal Taxes.

This corresponds exactly with the original, which I return to Don Vicente Coromina, which I attest and refer to, and at the instance of the exhibiting party, I, Don Rafael Delgado Monreal, as deputy of my colleague, Don Antonio Turón y Boscá, draw up the present Attestated copy on a foolscap sheet, No. (0)34,369, and on six consecutive sheets, &c., &c., which I sign, stamp, and rubrick, Madrid 12th April, 1898.

(Here is note of the enterpolation: "As the representative of the Company, or H. M., the Queen Regent of Spain.")

[L. S.] RAFAEL DELGADO MONREAL.

110 Ministry for the Colonies:

By Royal Order of this date, the Minister for the Colonies communicates to the Governor-General of the Philippine Islands the following: "By telegram of 13th instant, and in compliance with the request of the representative in Madrid of the Company holding the Concession for the Submarine Telegraph Cable between Hongkong and Manila, it was decided that your Excellency should be authorised to establish at Malate a Branch Station to that of the State in the Office of the Visayas-Hongkong Cable, it being expedient in fact to establish the said Branch Office to that of the State of Manila in order to facilitate the exchange (of correspondence) and the proper organisation of the service, and likewise agreeing to give the Agents of the above-mentioned Company every facility desirable for the advantage of the said means of communication, thus avoiding difficulties which the Municipal Authorities may raise. With the object indicated H. M. the King (whom God preserve), and in his name the Queen Regent of the Kingdom, has been pleased to order that the aforesaid telegram be approved, and that the Governor-

facilite cuanto estime conducente al mejor servicio de las comunicaciones telegraficas de que se trata."

Lo que de Real Orden, comunicado por el Sr. Ministro de Ultramar, digo á V para su conocimiento y efectos consiguientes.

Dios guarde á V muchos años.
Madrid, 21 de Abril, de 1898.

El Subsecretario,
B. QUIROGA.

General should order and facilitate whatever he deems conducive to the better working of the means of communication in question."

The preceding, communicated by the Minister for the Colonies. I pass on to you for your guidance and the necessary effects.

May God preserve your Worship many years.
Madrid, 21st April, 1898.

B. QUIROGA,
Under Secretary.

111 III. *General Traverse.*

No demurrer, plea, answer, counterclaim, setoff, claim of damages, demand, or defense in the premises, having been entered on the part of the defendants, a general traverse is entered as provided by Rule 34.

IV. *Argument and Submission of Case.*

On February 24, 1919, this case was argued and submitted on merits by Mr. Louis Marshall, for the claimant, and by Mr. William F. Norris, for the defendants.

112 V. *Findings of Fact, Conclusion of Law, and Opinion of the Court by Campbell, Ch. J. Entered April 7, 1919.*

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of Fact.

I.

The claimant is a corporation organized under the laws of United Kingdom of Great Britain and Ireland, and as such was, prior to 1879, and has ever since been authorized to construct, maintain, and operate lines of submarine telegraph cables and lines of telegraph in various parts of the world, and particularly in the Far East, including Australasia, China, and the Philippine Islands.

II.

On or about February 22, 1879, the claimant secured from the Kingdom of Spain a grant and concession for the establishment and working of a submarine telegraph cable between the island of Luzon, one of the Philippine islands, and Hongkong, in China, pursuant to which the claimant was given certain privileges. Correct translations of said grant and concessions and of the documents constituting the same (the originals of which were executed in the Spanish language) are annexed to the claimant's amended petition herein, are marked "Exhibit A," and are hereby made a part of these findings by reference with the same force and effect as though the same were herein set forth in full.

III.

Thereafter, and on or about April 14, 1897, a further concession was granted by the Kingdom of Spain to the claimant whereby the claimant was authorized to construct and work three submarine tele-

graph cables for the purpose of establishing submarine telegraph communications between the islands of Luzon, Panay, Negros, and Cebu, in the Philippine Archipelago.

113 Correct translations of said concession and of the several documents constituting the same (the originals of which were executed in the Spanish language) and a copy of the conditions of said concession in the Spanish language are annexed to claimant's amended petition, are marked "Exhibit B," and are hereby made by reference a part of these findings with the same force and effect as though the same were herein set forth in full.

IV.

On or about March 30, 1898, a further concession was granted by the Kingdom of Spain to the claimant for the establishment and working of a submarine cable from Hongkong and Manila in extension of the cable constructed under authority of the aforesaid grant of February 22, 1879 (schedule A aforesaid). Correct translations of all the documents constituting the same (the originals of which were executed in the Spanish language) are annexed to the amended petition marked "Schedule C," and are hereby made a part of these findings by reference with the same force and effect as though the same were herein set forth in full.

V.

The cable laid under the first concession (schedule A) between Hongkong and Cope Bolinao, on the island of Luzon, was completed and opened for working May 8, 1880. The cables laid under the second concession between the islands of Luzon, Panay, Negros, and Cebu were completed and opened for working in October, 1897. The extension provided for under the third concession of the Hongkong-Bolinao cable from Bolinao to Manila was completed and opened for working in April, 1898, and, with the exception of the customary short periods of interruption for ordinary repairs and the interruption of the communication caused by the cutting of the cable by the American fleet in Manila Bay on May 2, 1898, which lasted until August 21, 1898, the Hongkong-Manila cable has continued to be operated by the claimant ever since it was first opened for traffic. The cable between Luzon and Panay was cut by the American fleet on May 23, 1898, which interrupted the communication with Iloilo and Cebu until the cable was repaired on August 25, 1898. Subsequently the communication was seriously interferred with by the Filipino rebels.

Changes in the location of the cables connecting said islands were made as hereinafter stated, and since they were made and completed, about March, 1899, they have continued to be operated, subject to the customary short interruptions while undergoing ordinary repairs.

The cables referred to under the name of the Visayas cables are

those belonging to the claimant connecting the islands of Panay, Negros, and Cebu with Luzon, the latter being the seat of government of the Philippine Islands, and Panay and Cebu being the centers of the sugar and hemp industries.

Except as herein stated, claimant has at all times since the making of the aforesaid grants and concessions, and of each of them,
114 been ready, able, and willing to perform all of the conditions imposed upon it by the terms thereof.

VI.

Prior to December 10, 1898, the Philippine Archipelago, including the islands of Luzon, Panay, Negros, and Cebu, constituted territory of the Kingdom of Spain and was under its jurisdiction. On that day the Kingdom of Spain, by treaty, ceded to the United States the Philippine Archipelago, including the aforementioned islands. Pursuant to that cession under said treaty the United States acquired jurisdiction over the Philippine Islands and has continued to exercise the same.

VII.

The Visayas cables—that is those cables connecting the island of Luzon with the islands of Panay, Negros, and Cebu—were originally laid by the shortest practicable route, in accordance with the specification embodied in the said Visayas concession. The cable was extended from Manila to Kapiz, a station on the north coast of the island of Panay, where it connected with land telegraph lines, reaching Iloilo on the southern coast of Panay. A cable was laid from Iloilo to Bakalod, a station on the west coast of the island of Negros, where it connected with the land telegraph lines extending from said station to Esgalante on the northeast coast of Negros. A cable was laid from Esgalante to Tuburan, a station on the west coast of the island of Cebu, where it connected with a land telegraph line extending from Tuburan to the city of Cebu. These land lines were not owned by the plaintiff. These cables were dependent for through communication on Government land lines laid across the islands, as above stated. These land lines were maintained and worked unsatisfactorily, causing frequent complaints on the part of the telegraphic public in communication between Manila and the islands.

Prior to February, 1899, the land lines connecting the cable stations had been destroyed by insurgents, thus rendering the cable service frequently useless, and the claimant had been compelled to close its stations in the islands of Panay, Negros, and Cebu because of the insurrection which developed in the Visayas Islands, involving imminent danger to the lives of its agents.

Recognizing that it would make the claimant independent of unprotected, badly constructed, and inefficient land lines between Kapiz and Iloilo, and that by improving the telegraphic communication it would gratify the commercial community of Manila and Iloilo, the

claimant, on or about the 17th of February, 1899, through its authorized agent, communicated to the Secretary of State at Washington, the claimant's willingness to cut off the Manila cable at Kapiz and extend it direct to Iloilo at its own expense. The United States Government authorized the claimant to extend the cable to Iloilo, reserving all rights of the United States.

On account of the conditions above stated, the claimant expressed its willingness to improve the communication between said islands by extending, at its own expense, the cables from Manila direct to the capitals of the several islands of Panay, Negros, and Cebu,
115 and subsequently carried out these extensions by laying about three hundred and seventy-five (375) miles of cable, costing approximately thirty-eight thousand pounds (£38,000). These extensions were carried out with the approval of the military authorities in control of the Philippines at that time, and by the sanction of the United States Government, but without prejudice to and with the reservation of, all rights of the Government of the United States.

VIII.

The claimant has since December 10, 1898, afforded to the United States the right of priority for its official correspondence by means of the Philippine cables. The principle of priority of transmission of Government telegrams is laid down by the international telegraph convention, and, although the United States was not a party to the convention, the claimant transmitted the American official telegrams over the Philippine cables in accordance with the convention.

Since December 10, 1898, the claimant has charged the Government of the United States for messages transmitted over the Visayas cables at half the rates charged for private dispatches. The regular rates established by the claimant have been 50 centimes per word for private or commercial messages, 25 centimes per word for Government messages, and a less rate per word for press dispatches.

IX.

Between the 10th day of December, 1898, and March 1899, considerable correspondence was exchanged between the Government of the United States and the claimant regarding the transmission of official telegrams over the Hongkong-Manila cable at reduced rates.

On the 1st of March, 1899, the Secretary of War transmitted to the chairman of the claimant company a telegram, stating that the War Department "accepts the courteous offer of your company to transmit messages free between Hongkong and Manila, providing that this acceptance leaves in abeyance Spanish concession which is now under consideration." On the following day the claimant's reply was transmitted to the War Department, stating that the foregoing telegram had been received and the reservation therein noted, and that "the company have pleasure in affording all possible facilities to the United States Government in connection with the transmis-

sion of their telegrams." On the 28th of March, 1899, a written communication was transmitted by the War Department to the duly authorized representative of the claimant company, to the effect that "upon careful reconsideration of the subject it is deemed inadvisable for the department to avail itself of your company's offer. I beg to state, therefore, that the department will pay the established rates on official cable messages, and all accounts of this character presented to the United States will be paid." This communication concluded with a renewal of thanks "for the voluntary reduction in rates which your company has so courteously tendered." The United States Government has paid full established rates on the Hongkong-Manila cable, and has paid the established rates on the Visayas cables on its messages.

116 The claimant has carried on its books an account called a "suspense account," in which it has credited the Government with all payments made by the Government upon cable messages and has debited the Government from year to year with the subsidy provided in the Spanish concession to claimant.

X.

The claimant has annually rendered statements to the authorities in the Philippine Islands since December, 1901, as follows: A claim having been filed by claimant with the military government of the Philippine Archipelago, a communication was addressed by the auditor of the Philippine government to the claimant's superintendent at Manila on the 21st of June, 1902, stating that the claimant's claim for subsidy alleged to be due had been referred to that office and that it was desired that in addition to data already filed, the claimant submit a full statement of the amounts paid by the United States and by the military government of the Philippine Archipelago for the transmission of official matter over the Hongkong line since August 13, 1898, to and including May 31, 1902, and that the statement should set forth (1) the number of words sent during each month, the rate per word, and the company's share of any amount collected; (2) a complete statement of the actual expenses of maintaining the stations of the Visayas cable lines between Luzon, Panay, Negros, and Cebu, from February 28, 1899, to the 31st of May, 1902; (3) a statement showing the total number of words sent over the last-named lines for each month from February 20, 1899, to May 31, 1902, the rates per word and the total amount received, except for the year 1902, "for which period a statement is already on file."

The claimant transmitted in September, 1902, to the said auditor a statement showing that between August, 1898, and July 1, 1902, there had been transmitted by cable 286,029 words, and had been received by cable 154,817 words, making a total of 440,846 words which, at regular rates, when reduced to pounds sterling, amounted to £29,150.6.9. Crediting the United States Government with said amounts, the claimant's statement showed a deduction therefrom "on account of subsidy of £4,500 per annum" during said period, "as per

article 10 of the Visayas concession," amounting to £15,750, which would leave a balance due to the Government of £13,409.6.9.

On the 17th day of September, 1902, the claimant transmitted to said auditor a statement showing amounts collected and paid on account of surtax during the month of August, 1902.

On the 21st of January, 1903, the claimant company transmitted to the "Secretary of finance and justice" of the civil government of the Philippine Islands a statement of a claim made by the claimant "for the subsidy due on account of the Visayas cables, from the 1st January, 1899, to the 31st December, 1902, amounting to eighteen thousand pounds sterling (£18,000.)"

On the 21st of January, 1903, the claimant's representative transmitted to the secretary of finance and justice of the civil government of the Philippine Islands a statement showing "Summary of
117 Visayas traffic for the year ending 31st December, 1902."

Said statement showed that the regular charges or rates were 50 centimes per word for ordinary or commercial business, 25 centimes per word for Government business, and 18 centimes per word for press dispatches.

In said communication of the 21st of January the claimant referred to article 16 of the Visayas concession and claimed that the 6,000 pounds therein referred to *was* to be deducted each year from the receipts before any part of the 10 per cent mentioned in the concession would accrue. The communication stated:

"The earnings for the period mentioned amounted to seven thousand seven hundred and eighty-nine pounds sixteen shillings and six pence, sterling (£7,789.16.6), deducting from which sum stated in the above-quoted article (£6,000), leaves balance of one thousand seven hundred and eighty-nine pounds sixteen shillings and six pence, sterling (£1,789.16.6), 10 per cent of which amount is due to the Government, viz, one hundred and seventy-eight pounds nineteen shillings and eight pence, sterling (£178.19.8)," and that the amount due for the year 1901, namely, £5.17.6, "still remains unpaid." The communication concluded:

"I therefore have the honor to request that the necessary permission be given to the Treasurer to receive these amounts, now standing to the credit of the United States Government in the Philippines."

What, if any, reply was made to said communication does not appear from the record.

On the 26th of January, 1904, the claimant's representative forwarded a statement to "The secretary of finance and justice" at Manila, showing the number of words transmitted over the Visayas cables during the year 1903, amounting, on the basis of rates above stated, to £5,700.12.7. The communication again referred to article 16 of the said concession, and claimed that the receipts not having amounted to £6,000, "the provision for payment to the Government of the 10 per cent is not applicable to the year 1903." The communication further stated:

"The amount due for the years 1901 and 1902 were, respectively, five pounds, seventeen shillings and six pence (£5.17.6), and one

hundred and seventy-eight pounds, nineteen shillings and eight pence (£178.19.8), against which must be debited the sum of twenty-two thousand five hundred pounds, due on account of subsidy for the maintenance, etc., of the said cables, as per article 10, of the same concession, leaving a balance, therefore, of twenty-two thousand three hundred and fifteen pounds, two shillings and ten pence (£22,315.2.10) in favor of the company."

Whether any reply was made to this communication does not appear from the record.

Again, on the 11th of June, 1905, the claimant's representative forwarded a statement to "The secretary of finance and justice" at Manila, showing the gross earnings for the year 1904 of the Visayas cables, amounting to £4,978.17.0. This sum being less than £6,000, left nothing due upon the 10 per cent tax, according to claimant's statement. The communication further stated:

"The amounts due for the years 1901 and 1902 were, respectively, five pounds, seventeen shillings and six pence (£5.17.6), and
118 one hundred and seventy-eight pounds, nineteen shillings and eight pence (£178.19.8), which remain at your disposal."

On the same day, the 11th of June, 1905, the claimant's representative forwarded to "The Secretary of finance and justice" at Manila a communication, with an attached statement, purporting to show the amount "due to the United States Government in the Philippines, on account of the transmission of all United States Government traffic over the Manila-Hongkong cable, as per the concession granted us for the laying of the same up to and including December 31, 1904." The amount due, as per said statement, was £31,712.10.6, against which was debited the sum of £27,000 due on "account of subsidy for the maintenance, etc., of the cables operating between the islands of Luzon, Panay, Negros, and Cebu, as per article 10 of the concession granted to claimant by the Government of Spain, dated 14th of April, 1897, leaving a balance, therefore of four thousand seven hundred and twelve pounds, ten shillings and six pence (£4,712.10.6) in favor of the United States Government in the Philippines, as to the disposal of which I shall be glad to receive your instructions." The said statement was in the form of an account of the United States Government at Manila with the claimant, and credited the United States Government at Manila with the "value of American Government traffic with the Philippines passing over the Hongkong-Manila cable from 21st August, 1898, to 31st December, 1904, £30,766.6.1," and "By value of American Government traffic passing over the Hongkong-Manila cable to and from the Commercial Pacific cable from 25th July, 1903, to 31st December, 1904, £946.4.5," and then debiting the Government with "Visayas Subsidy at £4,500 per annum to December, 1904, £27,000," thus leaving a balance standing to the credit of the United States Government on December 31, 1904, of £4,712.10.6.

On the 26th of July, 1905, the auditor of the government of the Philippine Islands addressed a communication to the claimant's superintendent at Manila, acknowledging receipt of the letter of the 11th of June, "forwarded to this office by the honorable secretary of

finance and justice, in which you stated that there is due the insular government under your concession the sum of four thousand seven hundred and twelve pounds ten shillings and six pence (£4,712.-10.6)" and adding, "It is respectfully requested that said amount be deposited with the insular treasurer as miscellaneous revenue."

On the 8th of September, 1905, the auditor addressed a communication to the claimant's superintendent, as follows:

"THE GOVERNMENT OF THE PHILIPPINE ISLANDS,

"OFFICE OF THE AUDITOR,
"MANILA, 8th September, 1905.

"SIR:

"I have the honour to acknowledge receipt of your letter of September 6, 1905, in which you state that you have that day made payment to the insular treasury of the amount as stated in my letter of July 26, viz, £4,712.10.6, and requesting that when the receipt is issued it should state that the amount is the balance due the Government as per statement of account rendered by your company to the honourable the secretary of finance and justice on the 11th June, 1905.

119 "In reply, I beg to state that receipts have been prepared by the treasurer, countersigned by the auditor, and given to the treasurer in escrow for collection from your bankers, they declining to pay until receipt is delivered.

"It appears that the foregoing amount related solely to Manila-Hongkong transactions, as stated in your separate letter of June 11, 1905. In another letter under the same date you show a balance due the Government on account of the Visayas concession as follows:

For the year 1901	£5.17.6
For the year 1902	£178.19.8
	£184.17.2

"This letter was not considered in my reply of July 26, and it is respectfully requested that this additional amount be deposited in the insular treasury in the same manner.

"Respectfully,

"(Sgd.) A. L. LAWSHE,
"*Auditor.*

"The Superintendent, Eastern Extension, etc., Tel. Co., Manila, P. I."

On the 8th of September, 1905, a receipt was given as follows:

"No. 1556.

"THE GOVERNMENT OF THE PHILIPPINE ISLANDS,

"OFFICE OF THE TREASURER,
"MANILA, P. I., 8th September, 1905.

"I certify that Chartered Bank of India, Australia, and China, Manila, P. I., has this day paid to the treasurer of the Philippine Islands forty-six thousand six hundred thirty-nine and 42/100 pesos, Philippine currency, and —/100 dollars U. S. currency, on account of misc. bal. due Government as per statement of account rendered by Eastern Extension, etc., Telegraph Coy. to secretary, finance & justice, June 11/05, for which I have signed receipt in triplicate.

"P. 46639.42 Philippine currency. Equivalent of £4,712.10.6 at 2/-¼ per peso.

"(Sgd.) FRANK A. BRANAGAN,
"Treasurer.

"8th September, 1905.
"Countersigned.
"(Sgd.) A. L. LAWSHE,
"Auditor."

On the 8th of November, 1905, another receipt was given, as follows:

"No. 2737.

"THE GOVERNMENT OF THE PHILIPPINE ISLANDS,

"OFFICE OF THE TREASURER,
"MANILA, P. I., 8th November, 1905.

"I certify that Eastern Extension, etc., Telegraph Coy., Manila, P. I., has this day paid to the treasurer of the Philippine Islands one thousand eight hundred fifteen and 48/100 pesos, Philippine — government, for 1901 and 1902, according to article 16 of the
120 schedule of conditions of the Visayas cable concession, as per letter dated June 11, 1905, for which I have signed receipt in triplicate.

"P. 1815.48 Philippine currency.
"Countersigned Novr. 9th, 1905.
"(Sgd.) FRANK A. BRANAGAN,
"Treasurer.
"(Sgd.) W. W. BARRE,
"Acting Auditor."

On the 25th of January, 1906, the claimant's representative transmitted a statement to "The secretary of finance and justice" at Manila, as follows:

"The United States Government at Manila in Account with the Eastern Extension, Australasia and China Telegraph Company, Limited.

"Free Transmission of American Government Telegrams Over Hongkong-Manila Section.

1906, Jan. 1st:

By value of American Govt. traffic with the Philippines passing over the Hongkong-Manila cable from 1st Jan. to 31st December, 1905		£459. 16. 4
By value of American Govt. traffic passing over the Hongkong-Manila cable to and from the Commercial Pacific cable from 1st Jany. to 31st December, 1905.		696. 0. 7
Amount due to Government as per art. 16 of the schedule of conditions of the Visayas concession		124. 9. 0
To Visayas subsidy from 1st Jany. to 31st December, 1905	£4,500	
	£4,500	£1,280. 5. 11
By balance due to company on 31st December, 1905		£3,219. 14. 1
	£45,500	£4,500. 0. 0

"(Signed) HERBERT W. JONES,
"Supt. in the Philippines."

Each year thereafter the claimant's representative forwarded to the secretary of finance and justice a statement similar to the above, varying only in the amounts, and as stated hereafter in the name of party, said statements continuing down to and including the year 1915.

Except the payment above referred to in 1905 the claimant has never paid anything into the treasury of the Philippine government. It does not appear that any part of said sum was paid into the Treasury of the United States. Nor has the claimant paid any sum to the United States Government. The United States Government has paid the full rates charged by the claimant for messages over any of said lines.

The amount credited to the United States Government in claimant's "suspense account" for the years 1905 and 1915, inclusive, "on account of transmission of United States Government messages over Hongkong-Manila cable" amounted to two thousand, five hundred and sixty-seven pounds, no shillings and eleven pence (£2,567.0.11), and the amount credited "under article 16 of Visayas Concession (10 per cent) on receipts of over six thousand pounds (£6,000)," seven hundred and two pounds, one shilling and three pence
121 (£702.1.3), making a total credit to the Government upon said suspense account of three thousand, two hundred and

sixty-nine pounds, two shillings and two pence (£3,269.2.2). The suspense account then debited the United States Government with the "subsidy owing to Company by the United States Government four thousand, five hundred pounds (£4,500) for each of said years, aggregating forty-nine thousand, five hundred pounds (£49,500), leaving a balance, according to said suspense account, due the Company of forty-six thousand, two hundred and thirty pounds, seventeen shillings and ten pence (£46,230.17.10), a pound sterling being equivalent to four dollars and eighty-six and one-half cents ($4.86½) American money.

Since December 10, 1898, the claimant has collected the surtax of five (5) centimes of a franc per word on all telegrams transiting between the island of Luzon on the one side, and the islands of Panay, Negros, and Cebu on the other side, but no surtax was paid on the telegrams exchanged between the Visayas Islands. Up to the end of the year 1915 this surtax had amounted to seven thousand one hundred and ninety-four pounds two shillings and two pence (£7,194.2.2), and the same was paid to the local authorities by monthly payments in local currency.

XI.

The several statements rendered by the claimant above referred to between the years 1905 and 1915, inclusive, showed that the 10 per cent on receipts in excess of six thousand pounds (£6,000) from the Visayas cables amounted in 1905 to one hundred and twenty-four pounds nine shillings and no pence (£124.9.0), in 1909 to fifty-two pounds seven shillings and six pence (£52.1.6), in 1910 to two hundred and eighty pounds nine shillings and eight pence (£280.9.8), in 1911 to two hundred and eight pounds no shillings and one *pence* (£208.0.1), in 1912 to thirty-six pounds fifteen shillings and no pence (£36.15.0), in the aggregate amounting to seven hundred and two pounds one shilling and three pence (£702.1.3), and that the receipts for the years 1906, 1907, 1908, 1913, 1914, and 1915, respectively, were less than six thousand pounds (£6,000) per annum.

Said statements also showed that the Government messages transmitted over the Hongkong-Manila cable, and paid for at established rates, between the years 1905 and 1915, inclusive, amounted to two thousand five hundred and sixty-seven pounds no shillings and eleven pence (£2,567.0.11).

The several statements of accounts rendered by the claimant as its suspense account was stated, up to 1910, as "The United States Government at Manila" in account with the claimant. Commencing with January, 1910, and thereafter, the account was stated as "The Philippine government" in account with the claimant.

Conclusion of Law.

Upon the foregoing findings of fact, the court concludes, as matter of law, that the claimant is not entitled to recover, and that its petition ought to be, and is hereby dismissed.

122

Opinion.

CAMPBELL, *Chief Justice,* delivered the opinion of the court.

The petition in this case as originally filed was demurred to, and the case was dismissed for want of jurisdiction. (48 C. Cls., 33.) This ruling was affirmed by the Supreme Court. (231 U. S., 326.) It was definitely held that section 153, Judicial Code (R. S., sec. 1066), providing that the jurisdiction of this court shall not extend to any claim against the Government "growing out of, or dependent on, any treaty stipulation entered into with foreign nations" remains in effect, notwithstanding the broadening of the court's jurisdiction by the Tucker Act of 1887. It was, however, considered by the Supreme Court that the petition might be subject to amendment so as to present a claim that the United States is liable to the claimant as upon implied contract. The court said:

"If the petition can be fairly said to present the claim that the United States, not simply by virtue of succession to sovereignty under the treaty of cession, but through its subsequent transactions with the appellant, and by contract to be implied from such transactions, has become indebted to the appellant, we think that the claim, as thus limited, would be within the jurisdiction of the court below under the act of 1887."

The case was remanded to this court for further proceedings upon the theory of implied contract.

The plaintiff has filed an amended petition, to which the defendant has not demurred, though we think it may be said, accurately, of the amended petition, as was said by the Supreme Court of the original, "that the averments of the petition lack definiteness."

Upon the hearing of the case in this court the plaintiff's argument principally consists of an effort to show that the United States Government is responsible to the plaintiff because of its succession to sovereignty in the Philippines. This theory has been rejected by the Supreme Court.

The claim that the United States Government has accepted the benefits of the cables, and has "assumed and adopted all of the obligations, and the performance of all of the conditions, accepted by the Kingdom of Spain," is not sustained by the evidence. It appears that soon after the occupancy of said islands by the United States, its authorities refused to recognize the claim of the plaintiff, and insisted upon paying the rates established by the plaintiff. The Government did not assume to fix the rates. It also appears that the cables themselves were changed and relocated for the benefit of the plaintiff and its customers, and for which the United States Government assumed no responsibility.

The plaintiff having received payments from the United States Government for the services rendered, could not, by its own system of bookkeeping, or by what it called a "Suspense account," vary the effect of the transaction or impose an obligation upon the Government which it had not assumed. By this suspense account the

plaintiff credited the United States Government with what it paid, and debited it with items which plaintiff was insisting upon; and statements of this account were rendered each year to some authority in the Philippines. But, manifestly, this would not make a contract between the parties to this action.

123 It appears that in 1905, after considerable correspondence with some of the authorities in the Philippines, the plaintiff paid into the treasury there several thousand pounds. The receipt at Manila of that money was inconsistent with the position which the Government's representatives at Washington had taken, and it can not be said that the receipt of the money by the auditor of the Government of the Philippines was a receipt by the United States Government. The authority to bind the United States under such circumstances is not shown.

We are of opinion that the plaintiff has shown no contract with the United States, and the petition should therefore be dismissed.

124 VI. *Judgment of the Court.*

At a Court of Claims held in the City of Washington on the Seventh day of April, A. D., 1919, judgment was ordered to be entered as follows:

The Court, upon due consideration of the premises find in favor of the defendants, and do order, adjudge, and decree that the Eastern Extension, Australasia and China Telegraph Company, Limited, as aforesaid, is not entitled to recover and shall not have and recover any sum in this action of and from the defendants, the United States; and that the petition herein be and it hereby is dismissed.

BY THE COURT.

VII. *Claimant's Application for, and Allowance of, an Appeal to the Supreme Court.*

From the judgment rendered in the above-entitled cause on the 7th day of April, 1919, in favor of the defendants dismissing the petition the claimant, by its attorneys, on the 15th day of April, 1919, make application for, and give notice of an appeal to the Supreme Court of the United States.

GUGGENHEIMER, UNTERMYER & MARSHALL.
LOUIS MARSHALL.

Filed April 15, 1919.

Ordered: That the above appeal be allowed as prayed for.

BY THE COURT.

April 21, 1919.

125

Court of Claims.

No. 30767.

THE EASTERN EXTENSION, AUSTRALASIA AND CHINA TELEGRAPH COMPANY, LIMITED,

vs.

THE UNITED STATES.

I, Sam'l A. Putman, Chief Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact, conclusion of law, and opinion of the court; of the judgment of the court; of the claimant's application *of the claimant* for, and the allowance of, an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington City this Twenty-second day of April, A. D., 1919.

[Seal of the Court of Claims.]

SAM'L A. PUTMAN,
Chief Clerk Court of Claims.

Endorsed on cover: File No. 27,081. Court of Claims. Term No. 357. The Eastern Extension, Australasia and China Telegraph Company, Limited, appellant, vs. The United States. Filed April 26th, 1919. File No. 27,081.

Office Supreme Court, U. S.
FILED
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JAMES D. MAHER,
CLERK.

Supreme Court of the United States

OCTOBER TERM, 1919.

No. 357.

THE EASTERN EXTENSION, AUSTRALASIA AND CHINA TELEGRAPH COMPANY, LIMITED,
Appellant,

against

THE UNITED STATES OF AMERICA,
Appellee.

MOTION TO ADVANCE.

GUGGENHEIMER, UNTERMYER & MARSHALL,
Appellant's Attorneys,
120 Broadway,
Borough of Manhattan,
New York City, N. Y.

LOUIS MARSHALL,
Of Counsel.

B. H. TYRRELL, PRINTER, 206-8 FULTON STREET, NEW YORK.

Supreme Court of the United States,

OCTOBER TERM, 1919.

No. 357.

THE EASTERN EXTENSION, AUSTRALASIA AND CHINA TELEGRAPH COMPANY, LIMITED,
Appellant,

against

THE UNITED STATES OF AMERICA.

Sir:—

Please take notice that upon the annexed affidavit of Louis Marshall, verified Sept. 30, 1919, and upon all the papers and proceedings heretofore had herein, the undersigned will pursuant to Rule 26 move this Court at the October, 1919, Term thereof to be held in the Capitol, in the City of Washington, District of Columbia, on the 13th day of October, 1919, at twelve o'clock noon on that day or as soon thereafter as counsel can be heard, for a rule or order advancing the appeal

herein and setting it down for argument on a day to be fixed.

Dated, N. Y., Sept. 30, 1919.

Yours, &c.,
GUGGENHEIMER, UNTERMYER & MARSHALL,
Attorneys for Appellant,
Office & Post Office Address,
No. 120 Broadway,
Borough of Manhattan,
New York City.

LOUIS MARSHALL,
Of Counsel.

To
THE HONORABLE A. MITCHELL PALMER,
Attorney General of the United States,
Washington, D. C.

Supreme Court of the United States,

OCTOBER TERM, 1919.

No. 357.

THE EASTERN EXTENSION, AUSTRALASIA AND CHINA TELEGRAPH COMPANY, LIMITED,
Appellant,

against

THE UNITED STATES,
Appellee.

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:
County of New York,

LOUIS MARSHALL, being duly sworn, deposes and says:

I am counsel for the appellant herein. The petition herein was filed in the Court of Claims on October 22, 1910. Judgment was therein demanded against the United States for the sum of $109,462.50, that being the aggregate of five instalments of an annual subsidy of £4,500 sterling which was payable to the appellant under the terms of a concession from the Government of Spain, whereby the appellant became empowered to construct, establish and operate three submarine telegraph cables to communicate between the Islands of

Luzon, Panay, Negros and Zebu, in the Philippine Archipelago. This subsidy as set forth in the concession is in the terms following:

"Article 9. The Concessionaire undertakes to work, at his own expense and risk, the cables of this Concession for a period of twenty years, the said term to begin from the date of the taking over of the cables and their adjuncts in perfect working order.

"Article 10. The Concessionaire shall enjoy an annual subsidy of £4,500 (four thousand five hundred pounds sterling), payable monthly in twelve instalments, during the whole term of the working of the cables, the said payments being made at Manila by the Chief Treasury Office of those Islands."

Pursuant to this grant the appellant constructed the cable lines, and has ever since maintained and operated them, and has at all times since the granting of the concession been ready, able and willing to perform all of the conditions imposed upon it by the terms thereof, and has actually fulfilled and continued to fulfill all of the said conditions and to perform all of the duties imposed upon it by the terms of the concession.

As a result of the Spanish-American war the sovereignty over the Philippine Islands was transferred to the United States, and it thereupon proceeded to exercise such sovereignty and to assume jurisdiction and control over the several lines of submarine cable and telegraph land lines established, constructed and operated by the appellant, and availed itself of all of the benefits and advantages thereof, using the lines of cable and telegraph for its governmental and other purposes and becoming in all respects the successor of the Government of Spain to all the rights, privileges

and advantages conferred upon and secured and 13
reserved by that government under the terms of the concession. Among these privileges was the right of precedence of all official dispatches at half the rates charged for those of a private character. This the United States has, ever since 1898, enjoyed.

After the filing of the appellant's petition the Government moved to dismiss the petition on the ground of lack of jurisdiction of the Court of Claims. After a full hearing the motion was denied, in an opinion which is reported in *46 Court of Claims Reports, 646.*

Thereupon the Government filed a demurrer, on 14
the grounds, first, that the petition did not set forth facts sufficient to constitute a cause of action against the United States, and second, that it did not disclose a cause of action within the jurisdiction of the Court of Claims. After full argument the Court sustained the demurrer and dismissed the petition, holding, contrary to its previous determination, that the Court had no jurisdiction under Section 1 of the Act of March 3, 1887, to hear and determine the appellant's claim, and that the United States, in the absence of treaty stipulation, was not liable for the obligations of Spain to the appellant (48 Ct. Cl. 33). 15

An appeal from the judgment dismissing the petition, was at once taken to this Court, where on December 1, 1913 the judgment of the Court of Claims was reversed and the cause was remanded, with instructions to take further proceedings in conformity with the opinion reported in 231 U. S. 326.

This Court in said opinion interpreted the Act of March 3, 1887 defining the jurisdiction of the Court of Claims, and also Section 1066 of the U. S. Revised Statutes, and held that the Court

16 of Claims has jurisdiction of claims based on contracts originally made with a former sovereign of ceded territory and assumed by the United States arising after the cession either expressly or by implication.

An amended petition was thereupon filed on October 4, 1915, in conformity with the intimation in the opinion of Mr. Justice Hughes. Judgment was therein demanded against the United States for the sum of $229,871.25 with interest. Thereafter depositions were taken in due form and the cause came on for final hearing on the claimant's proofs, the Government having interposed no evi-
17 dence, except a cablegram.

On April 7, 1919, the Court of Claims dismissed the petition herein and from said determination the appellant has appealed to this Court.

In view of the fact that this cause has been before this Court on a previous appeal as hereinbefore shown and that it has been pending during the past nine years, the interests of justice would be promoted by an early determination of the appeal now pending which involves important questions of law.

18 Wherefore this Honorable Court is respectfully requested to make an order advancing this cause and setting it for hearing at an early day in the October Term, 1919.

LOUIS MARSHALL.

Subscribed and sworn to before me this 30th day of Sept., 1919.

RAPHAEL BRILL,
Notary Public, No. 250,
New York County.
(Notarial Seal.)

Due, timely and proper service of the foregoing affidavit and notice of motion is hereby admitted, this 1st day of Oct. 1919.

Attorney General.

Office Supreme Court,
FILED
DEC 4 1919
JAMES D. MAHER
CLERK

Supreme Court of the United States

OCTOBER TERM 1919—No. 357.

THE EASTERN EXTENSION, AUSTRALASIA AND CHINA TELEGRAPH COMPANY, Limited,

Appellant,

against

THE UNITED STATES OF AMERICA.

APPEAL FROM THE COURT OF CLAIMS.

APPELLANT'S BRIEF.

LOUIS MARSHALL,
Appellant's Counsel.

PRESS OF FREMONT PAYNE, 74-80 Washington St.—'Phones 8153-4-5 Bowling Green.

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Supreme Court of the United States

OCTOBER TERM, 1919.

THE EASTERN EXTENSION, AUSTRALASIA AND CHINA TELEGRAPH COMPANY, LIMITED,
Appellant,
against
THE UNITED STATES OF AMERICA.
No. 357.

APPELLANT'S BRIEF.

This cause is brought here by appeal from a judgment rendered by the Court of Claims on April 7, 1919, dismissing the Claimant's petition.

The original petition was filed on October 22, 1910. The Claimant demanded judgment against the United States for $109,642.50, with interest, that being the amount then accrued of an annual subsidy of £4500 sterling payable for the years 1905 and 1909, both inclusive, pursuant to the terms of a concession from the Government of Spain to the Claimant, bearing date April 14, 1897, and the acts of the United States thereunder.

The Government demurred to the Claimant's

petition for want of jurisdiction. The demurrer was sustained and judgment was rendered by the Court of Claims dismissing the petition (48 Ct. Cl., 33).

An appeal was taken from that judgment to this Supreme Court, where, on December 1, 1913, the judgment of the Court of Claims was reversed and the cause was remanded, with instructions to take further proceedings in conformity with the opinion reported in 231 U. S., 326.

An amended petition was thereupon filed pursuant to an intimation contained in the opinion of Mr. Justice Hughes.

The Amended Petition.

The amended petition alleges that on or about February 22, 1879, the Claimant secured from the Kingdom of Spain, by royal authority, a grant and concession for the establishment and working of a submarine telegraph cable between the Island of Luzon, one of the Philippine Islands, and Hong Kong, China, whereby Manila on the Island of Luzon was to be placed in communication with the universal telegraph system. Pursuant to this grant the Claimant was given an exclusive privilege for forty years to maintain cable communication between these points, together with a monthly subsidy of $4,000 payable for ten years (Par. II, Rec., page 2).

In consideration of this grant it was agreed by the Claimant that the official correspondence of the Kingdom of Spain would be transmitted free of charge through the cable authorized to be constructed and maintained, with the right of prior-

ity to the Kingdom with respect to the transmission of its official correspondence for the term of the forty years of the duration of this grant to the Claimant. A copy of the grant, referred to as Schedule A, is appended to the amended petition (Par. III, Rec., page 2).

In conformity with the provisions of this grant the Claimant laid a cable from Hong Kong to Bolinao, on the Island of Luzon, whence by means of land lines constructed on that island, telegraph communication was instituted between Manila and Hong Kong, and thence to all other parts of the world by means of other cable lines, a considerable portion of which were owned and controlled by the Claimant, and the Claimant has ever since the construction of the cable, except when prevented by causes beyond its control, actually operated and is still working the same (Par. V, Rec., pages 2, 3).

On April 14, 1897, a further concession was granted by the Kingdom of Spain to the Claimant, whereby the latter became empowered to construct, establish and work three submarine telegraph cables for the purpose of enabling the Islands of Luzon, Panay, Negros and Zebu, in the Philippine archipelago, to intercommunicate. A copy of this grant and concession is annexed to the amended petition and is designated as Schedule B (Par. VI, page 3). That grant and concession contained the following articles (Par. VIII, Rec., pages 34, 52, 56):

> "ARTICLE 9. The Concessionaire undertakes to work, at his own expense and risk, the Cables of this Concession for a period of

twenty years, the said term to begin from the date of the taking over of the Cables and their adjuncts in perfect working order.

"ARTICLE 10. The Concessionaire shall enjoy an annual subsidy of £4,500 (four thousand five hundred pounds sterling), payable monthly in twelve instalments, during the whole term of the working of the Cables, the said payments being made at Manila by the Chief Treasury Office of those Islands.

"ARTICLE 16. The Company holding the Concession shall pay the State the ten per cent. which tax in its application to cablegrams is fixed after first deducting the amount of the expenses for the maintenance of the Stations, calculated at £6,000 (six thousand pounds sterling) per annum, the said expenses not to exceed the amount specified.

"ARTICLE 17. It shall be obligatory to transmit official despatches, which shall enjoy precedence, at half the rates charged for those of a private character. Official despatches, like private ones, shall be handed to the employes of the State for them to forward or deliver to the addressee.

"ARTICLE 18. The tax applicable to telegrams transiting over the said Cables shall be uniform—fifty centimes of a franc per word—no transit nor terminal rate being charged for the telegraphic transmission over the land lines belonging to the Government in

the Islands of Panay, Negros and Zebu. There is a sur-tax of five centimes of a franc per word on telegrams transiting between the above mentioned Islands and the others of the Archipelago."

Pursuant to this grant and concession and in conformity with its provisions, the Claimant alleges that it duly constructed, established and placed in working order the three submarine cables specified in the concession between the Islands of Luzon, Panay, Negros and Zebu, and opened them for traffic in October, 1897, and has ever since maintained and operated them. These cables are known as the Visayas Cables and the islands which they connect are referred to as the Visayas Islands (Par. IX, Rec., page 4).

On March 30, 1898, a further concession was granted by the Kingdom of Spain to the Claimant for the establishment and working of a submarine cable from Hong Kong to Manila in extension of the cable constructed under the authority of the grant of February 22, 1879. This extension was completed in April, 1898. By the terms of that concession, which is annexed to the amended petition and designated Schedule C, it was provided, among other things, that the Claimant was to have an extension for twenty years, expiring on May 8, 1940, of the monopoly theretofore enjoyed by it for the working of the Hong Kong-Manila cable, until which date no other submarine telegraph line was to be laid between Hong Kong and Manila, and that in the period of twenty years covered by such extension the Government might redeem the privilege of establishing cables in the islands then

belonging to it in the Pacific Ocean, by the annual payment to the Claimant of £5,000 sterling for the years covered by said extension which might then remain unexpired (Pars. X and XI, Rec., page 4).

Among the other conditions for such extension there were set forth in the Schedule of Conditions thereto annexed the following:

> "10. In all cases the Government official correspondence shall enjoy the privilege of priority of transmission by the Cable; and agreeably to the Service Regulations at present in force in the Philippine Islands, it shall be free of charge during the first ten years of the present Concession; for the ten years following it shall be paid at the rate of one-fourth the ordinary tariff, and at half the same during the aforesaid second period and until the expiration of the Concession.
>
> "11. The Concessionaire shall fix the tariff for the private correspondence transiting over the Cable, the maximum rates for which shall not exceed those adopted by telegraph companies whose cables are similarly circumstanced" (Par. XII, Rec., pages 4, 79).

Claimant alleges that it has at all times since the making of these grants and concessions been and continues to be ready, able and willing to perform all the terms and conditions imposed upon it by their terms, and has actually performed and fulfilled, and continues to perform and fulfill, all of these conditions, and to comply with and per-

form all duties and obligations imposed upon it by the terms of these grants (Par. XIV, Rec., page 5).

It is further alleged that on December 10, 1898, after the cession by Spain to the United States of the Philippine Islands, the United States entered into the occupancy of the islands and has ever since exercised sovereignty over them and jurisdiction and control over all property and property rights in and upon the Philippine Islands, including the several lines of submarine cable and telegraph land lines constructed and operated by the Claimant under its several grants, and availed itself and has continued to avail itself of all the benefits and advantages thereof, using these lines of cable and telegraph for its governmental and other purposes, and became and has ever since continued to be the successor of the Kingdom of Spain with respect to all of the rights, privileges and advantages conferred upon and secured and reserved to that Kingdom under the terms of these several grants (Par. XVII, Rec., page 5).

It is alleged in Paragraph XVIII of the amended petition, that among other benefits and advantages derived and enjoyed by the United States from these cable lines constructed by the Claimant under these grants, and received from the Claimant, are the following (Rec., page 6):

> "(a) The Claimant has, from December 10, 1898, until December, 1908, transmitted, free of charge, through its cable from the Island of Luzon to Hong Kong, and since that time at quarter rate, the official correspondence of the United States of America, and has continuously afforded to it the right of priority

of transmission of such official correspondence through the said cable.

(b) The Claimant has also, ever since said date, transmitted the official messages of the United States of America over the Visayas Cables at half of the rates charged for private dispatches, and has at all times afforded them preference.

(c) The Claimant has also, ever since said 10th day of December, 1898, paid to the United States of America, in every year during which the income exceeded the expenses, a tax of ten per cent. upon its local receipts for cablegrams transmitted over the Visayas Cables constructed by the Claimant under the grant and concession of April 14, 1897, after first deducting the amount of the expenses for the maintenance of the stations operated by the Claimant on the Visayas Islands, such expenses not exceeding £6,000 per annum.

(d) The Claimant has likewise, ever since December 10, 1898, paid to the United States of America, a sur-tax of five centimes of a franc per word on all telegrams transiting between the Islands of Luzon, Panay, Negros and Zebu, and the other islands of the archipelago known as the Philippine Islands.

(e) For a considerable period of time after the cession by the Kingdom of Spain to the United States of America of the Philippine Islands, insurrections of the inhabitants of a

number of the aforesaid islands were in progress, and it became necessary for the United States of America, in its efforts to suppress such insurrections and uprisings, to make constant use of the aforesaid submarine cables connecting the Islands of Luzon, Panay, Negros and Zebu, and the United States of America was thereby facilitated in effectively governing the said archipelago and the inhabitant thereof, and in restoring and maintaining peace and order therein.

(f) After the United States of America entered into occupation of the Philippine Islands, the Claimant, by arrangement with the duly authorized officers of the United States of America, extended the Visayas Cables direct to the capitals of the Islands of Panay and Zebu, expending for such extension the sum of about £38,000, and thereby greatly improved the service between Luzon and the Visayas Islands."

It is further alleged that down to January 1, 1905, the value of the telegraphic correspondence of the United States of America to the Philippine Islands passing over the Hong Kong-Manila Cable of the Claimant, at the full rate charged for telegrams passing between Manila and Hong Kong, amounted to £31,712:10:6; that that sum had accumulated with the Claimant and was credited to the United States; that prior to that date the Claimant had rendered annual accounts to the United States showing the amount owing to it by the Claimant for the free transmission of

cablegrams of the United States over such lines, and deducting therefrom the annual subsidy of £4,500 sterling payable to the Claimant under the terms of Article 10 of the grant and concession of April 14, 1897; that the amount of the several instalments of subsidy which had accrued on December 31, 1904, was £27,000, that after deducting that sum from the amount credited by the Claimant to the United States as the value of the free transmission of cables, there remained owing to the United States by the Claimant the sum of £4,712:10:6, and that in August, 1905, at the request of the United States, the balance was duly paid to it by the Claimant, and was accepted and received by the United States in satisfaction thereof (Par. XIX, Rec., page 7).

It is then alleged that by reason of the premises the United States assumed and adopted all of the obligations and the performance of all of the conditions accepted by the Kingdom of Spain and agreed to by it according to the terms of the several concessions set forth in Schedules A and B, and agreed with the Claimant to perform the several covenants and agreements and to fulfill the conditions contained in these concessions and accepted and agreed to by the Kingdom of Spain, and that the United States of America, by the acceptance and enjoyment of the aforesaid benefits and advantages derived from the use of the cables constructed by the Claimant, agreed to pay the aforesaid annual subsidy of £4,500 sterling as required by the terms of Article 10 of the concession referred to as Schedule B (Par. XX, Rec., page 7).

It is finally alleged that the United States has nevertheless failed to perform its agreements and

to fulfill these conditions, in that it has failed and refused to pay the annual subsidy from 1905 to June 30, 1915 [and it may be added that such failure continued to September 30, 1917, when in accordance with the terms of the concession the subsidy ceased] by reason whereof the Claimant demands judgment against the United States for $229,871.38 [or to the date of the expiration of the subsidy $279,129.38], with interest at the rate of six per cent. per annum on the sum of $21,892.50 for each year beginning December 31, 1905, down to December 31, 1914 [and on $10,946 from June 30, 1915, and on $21,892.50 annually for each year beginning June 30, 1915, down to June 30, 1917, and on $6,419.38 from September 30, 1917], (Par. XXI, Rec., page 7).

The Findings.

These various allegations are fully substantiated by the depositions taken at the instance of the Claimant and were not contradicted by any testimony offered by the Government.

To avoid unnecessary repetition attention is directed to the Findings of the Court of Claims (Rec., pages 88 to 98), which for all practical purposes support the allegations of the Amended Petition.

Upon these Findings the Court, nevertheless concluded as matter of law, that the Claimant is not entitled to recover and that its petition should be dismissed (Rec., page 88).

This ruling being regarded as erroneous, an appeal having been allowed, the case is now brought here for review (Rec., page 100).

POINTS.

I.

That the Court of Claims had jurisdiction over this cause is settled by the decision of this Court on the former appeal.

The original petition presented a double aspect, the first on the theory of a liability growing out of the Treaty of Paris; the second on the theory of a liability arising from the adoption and enjoyment by the United States of the benefits and advantages growing out of the Visayas concession. On both theories judgment was demanded for the amount of the annual subsidy which had accrued down to the date of the filing of the petition. This Court decided (231 U. S., 326) that Section 1066 of the Revised Statutes, which Claimant contended had been repealed, was still in force, and that, therefore, in so far as the claim was based on the treaty stipulations, the Court of Claims had no jurisdiction to consider it. It was, however, expressly decided that, although there was no jurisdiction to consider the claim based on the treaty stipulations, the Court of Claims had jurisdiction of the claim based on the contracts originally made with Spain and assumed by the United States, either expressly or by implication, after the cession to it of the Philippine Islands. This Court necessarily decided that the allegations of the petition were such as to state a claim for the enforcement of the concession which came within the jurisdiction of this Court. Otherwise, instead of reversing

the decision appealed from, this Court would have affirmed it. Because the averments of the petition in this regard were considered as lacking desirable definiteness in the respects stated, its susceptibility to amendment was suggested. The general allegations which it contained were, however looked upon as apposite to a claim based on an implied contract outside of the treaty itself. Consequently the facts conferring jurisdiction would, if established, create a liability outside of the treaty for the enforcement of the subsidy granted under the concession, the benefits and advantags of which were adopted by the defendant.

This is made clear by the opinion of the Justice Hughes, who speaking for the Court said:

> "But the petition has another aspect. The grant to the appellant, as already stated, provided in Article 16 for a payment of a tax of ten per cent. and, under Article 17, for precedence and half rates in the transmission of official despatches. It is argued by the appellant that the fact that the United States 'has received and is receiving the special tax' and 'the precedence of half rates specified' must be regarded as admitted; and it is urged that under the general principles of jurisprudence the facts set forth in the petition import an obligation on the part of United States to the appellant to pay the subsidy provided for in the concession so long as the United States shall continue to avail itself of the rights and privileges which have accrued to it under the terms of the concession.

"If the petition can be fairly said to present the claim that the United States, not simply by virtue of succession to sovereignty under the treaty of cession, but through its subsequent transactions with the appellant, and by contract to be implied from such transactions, has become indebted to the appellant, we think that the claim, as thus limited, would be within the jurisdiction of the court below under the act of 1887. It is true that the averments of the petition lack definiteness. It is not specifically alleged that the United State has received the tax or enjoyed the benefit of the half rates, nor is it precisely stated what transactions have been had between the Government and the appellant. But the petition alleges that the United States, since it entered into the occupancy of the Islands, has 'availed itself of all the benefits and advantages' of the submarine cable and telegraph lines established by the appellant, 'using the said lines of cable and telegraph for its government and other purposes, which it has continued to do,' and that 'it has become in all respects the successor of the Government of Spain to all rights, privileges and advantages conferred upon and secured and reserved of the aforesaid concession.' These general allegations are not altogether inapposite with respect to a claim based upon an implied contract outside of the treaty itself, and the claimant should not be denied the right to have its claim thus considered, adjudicated. In this view, the petition would be susceptible of amendment and its sufficiency, in law and fact, could be heard and determined."

The petition was amended in accordance with the suggestions made and presents a cause of action directly within the jurisdiction of the Court of Claims as defined by the opinion just cited.

II.

The findings of the Court below fully sustain the allegations of the petition and establish a cause of action against the United States.

They show, beyond dispute, that since December 10, 1898, when the United States entered into the occupancy of the Philippine Islands, it assumed jurisidction and control over the Claimant's lines of submarine cable and its telegraph land lines, and availed itself and has continued to avail itself of all of the benefits and advantages thereof, using the lines of cable and telegraph for its governmental and other purposes. It has thereby enjoyed the various advantages, benefits and privileges set forth in the grants and concessions which constituted the consideration for the subsidy granted by the Concession of April 14, 1897. These advantages were of a most substantial character. They included:

(1) The free transmision until December, 1908, and since that time transmission at quarter rates, over the claimant's cable from Luzon to Hong Kong of the official correspondence of the United States, with the right of priority of transmission.

(2) The transmission of the official messages of the United States over the Visayas Cable at half rates, with the right of priority of transmission.

(3) The payment by the Claimant to the United States of a ten per cent. tax upon its local receipts in every year during which the income exceeded expenses, the latter being fixed at not to exceed £6,000 per annum.

(4) The payment to the United States of a surtax of five centimes of a franc per word on all telegrams transmitting between the Philippine Islands.

(5) The constant use by the United States during the progress of the insurrections in the Philippine Islands of the Visayas Cables thereby enabling it to restore and maintain peace and order there.

(6) The extension by arrangement with the duly authorized officers of the United States of the Visayas Cables at an expenditure of £38,000 for the improvement of telegraph communication.

Down to January 1, 1905, the allowance received by the United States on account of telegrams passing between Manila and Hong Kong amounted to £31,712:10:6. The Government recognized its obligation to the Claimant for the subsidy provided for in the Concession of April 14, 1897, by crediting the amount which had accrued on account thereof down to December 31, 1904, on the amount credited to it by the Claimant for the free transmission of telegrams passing between Manila and Hong Kong, and by receiving and accepting the

difference amounting to £4,712:10:6. The value of the financial benefits enjoyed by the United States under this Concession to the end of 1915 amounted to £50,606:8:9.

Yet in spite of all these substantial advantages the Government has failed to make any payment for the benefits received since January 1, 1905. It is believed that it is bound to make such payments for the reasons now to be stated:

1. *On the acquisition by the United States of sovereignty over the Philippine Islands, the Claimant's private rights of property were in no manner affected by the change of sovereignty, and the rights vested in it, both contractual and otherwise, and executory as well as executed, remained enforceable in accordance with the principles of international law.*

Although this proposition seems almost axiomatic, it will nevertheless be useful to cite the various decisions of our Courts which sustain it, and which, it is believed, are the foundation for the subsequent propositions which are to be presented on behalf of the claimant.

It is well settled in International Law that a mere change of sovereignty does not produce any change in private rights of property, whether the interest was acquired under a grant from the State, or by individual contract.

> *Mutual Assurance Society* vs. *Watts*, 1 Wheat., 279.

In *United States* vs. *Percheman*, 7 Pet., 51, it was held that, even if Florida had changed its

sovereign by an act containing no stipulation respecting the property of individuals, the rights of property would not be affected by the change of sovereignty.

Chief Justice Marshall said in the course of his opinion in that case (page 86):

> "Florida was a colony of Spain, the acquisition of which by the United States was extremely desirable. It was ceded by a treaty concluded between the two powers at Washington on the 22nd day of February, 1819. The second article contains the cession, and enumerates its objects. The eighth contains stipulations respecting the titles to lands in the ceded territory.
>
> It may not be unworthy of remark that it is very unusual even in cases of conquest, for the conqueror to do more than to displace the sovereign and assume dominion over the country. The modern usage of nations, which has become law, would be violated, that sense of justice and of right which is acknowledged and felt by the whole civilized world would be outraged, if private property should be generally confiscated, and private rights annulled. The people change their allegiance; their relation to their ancient sovereign is dissolved; but their relations to each other and their rights of property remain undisturbed. If this be the modern rule, even in cases of conquest, who can doubt its application to the case of an amicable cession of territory? Had Florida changed its sovereignty by an act containing no stipulation respecting the property of individuals, the right of property in all those who became sub-

jects or citizens of the new government would have been unaffected by the change; it would have remained the same as under the ancient sovereign. * * * A cession of territory is never understood to be a cession of the property belonging to its inhabitants. The King cedes that only which belongs to him; lands he had previously granted were not his to cede. Neither party could so understand the cession; neither party could consider itself as attempting a wrong to individuals, condemned by the practice of the whole civilized world. The cession of a territory, by its name, from one sovereign to another, conveying the compound idea of surrendering at the same time the lands and the people who inhabit them, would be necessarily understood to pass the sovereignty only, and not to interfere with private property."

This language is adopted in *Snow's Leading Cases on International Law,* page 21.

It has been held in numerous cases that a sovereign who acquires inhabited territory acquires full dominion over it, but this dominion does not divest the vested rights of individuals to property.

Delassus vs. *United States,* 9 Pet., 117.
Mitchell vs. *United States,* 9 Pet., 711.

By the law of nations, the rights and property of the inhabitants of a conquered country are protected and held sovereign and inviolable, irrespective of treaty.

Strother vs. *Lucas,* 12 Pet., 410.

When New Mexico was conquered by the United States, it was only the allegiance of the people that was changed; their relations to each other and their rights of property remained undisturbed.

Leitensdorfer vs. *Webb,* 20 How., 176.

The cession of California to the United States did not impair the rights of private property. These rights were consecrated by the law of nations.

United States vs. *Mereno,* 1 Wall., 400.

By the law of nations, a change of government does not affect pre-existing titles. Titles which were perfect before the cession of Louisiana to the United States continued so afterwards, and were in no wise affected by the change of sovereignty. *Such is the effect of the principles of the law of nations irrespective of treaty.*

United States vs. *Rosclius,* 15 How., 36.
Strother vs. *Lucas,* 12 Pet., 412.
Dent vs. *Emmeger,* 14 Wall., 308.

In *Cessna* vs. *United States,* 169 U. S. 186, Mr. Justice Brewer said:

> "It is the duty of a nation receiving a cession of territory to respect all rights of property as those rights were recognized by the nation making the cession."

In *Soulard* vs. *United States,* 4 Pet., 511, it was decided that the term "property," as applied to

lands, comprehends every species of title, inchoate or complete; it is supposed to embrace those rights which lie in contract; those which are executory; as well as those which are executed, and that in this respect a new government which receives territory by cession takes the place of that which has passed away.

Chief Justice Marshall said in support of this proposition:

> "In the treaty by which Louisiana was acquired, the United States stipulated, that the inhabitants of the ceded territory should be protected in the free enjoyment of their property. The United States, as a just nation, regard this stipulation as the avowal of a principle *which would have been held equally sacred,* though it had not been inserted in the contract."

The text writers have recognized the existence of these principles.

> 2 *Halleck's International Law* (3*d English Ed.*), 493.
> *Hall on International Law,* 97.

The authorities above collated unquestionably determine the validity of the grant from the Spanish Government to the Claimant, and the right of the latter to remain in the undisturbed enjoyment of the rights granted, during the term of the grant, exactly as it would, had the grant been one of land or other property or property rights; it being clear, in the language of Chief Justice Marshall in *Soulard* vs. *United States,* 4 Pet., 511, that the rule

which we invoke, "comprehends every species of title, inchoate or complete, and embraces rights which lie in contract, executory, as well as executed."

2. *Under the established doctrines of international law, where a part of the territory of one nation is annexed by cession or otherwise to the territory of another, the latter, by the act of annexation, becomes bound to fulfil all the obligations which pertained to the former in respect of the territory acquired and the property therein. It practically inherits the rights and obligations of the ceding state.*

This proposition must necessarily be largely based on general principles of international law, and upon the customs and usages of civilized nations as indicated in the works of jurists and commentators of recognized authority.

> "Where there is no treaty and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations; and, as evidence of these, to the works of jurists and commentators, who by years of labor, research and experience have made themselves peculiarly well acquainted with the subjects of which they treat. Such works are resorted to by judicial tribunals, not for the speculations of their authors concerning what the law ought to be, but for trustworthy evidence of what the law really is."
>
> *Hilton* vs. *Guyot*, 159 U. S., 113, 163, 215.
> *The Paquete Habana*, 175 U. S., 677, 700.

This subject is treated by modern authorities under the general term "State Succession."

The most philosophical work on the subject is that of *Max Huber*, entitled *"Die Staatensuccession,"* which has been cited approvingly by *Westlake* in his *International Law*, where at *page* 69, he thus translates the author's basic idea from *page* 18:

> "The notion of succession, is a general one in law, and belongs exclusively neither to private nor to public law. Succession is a substitution plus continuance. The successor steps into the place of the predecessor and continues his rights and obligations; so far the succession of private and public law agree. But we have to distinguish between these kinds of succession. A civil successor, who steps into the place of his predecessor steps into his rights and obligations, as though he were himself the predecessor. That is the universal succession of private law in the human sense, at least according to the prevailing doctrine. But the successor under international law, steps into the rights and obligations of his predecessor, as though they were his own."

Founded on this theory, the author shows that the succeeding state, is bound by all obligations of the ceding state, which pertain to the territory to which the contract out of which the obligation arises, relates.

This is also recognized by *Martens* in his *Treatise on International Law*, pages 368-369, where he says:

> "A state which annexes to itself the territory of another country takes the place of the defunct and succeeds to it completely as a judicial person. It inherits its rights and its obligations."

David Dudley Field, in his Outline of an International Code, in which he undertook to codify the law of nations as laid down in the best authorities then accessible, lays down the rule thus:

> §23. "Where part of the territory of one nation is annexed by cession or otherwise to the territory of another, the latter nation by the act of annexation acquires all the rights and becomes bound to fulfill all the obligations which pertained to the former nation in respect of the territory acquired, and its inhabitants, and the property therein, but no others."

The Italian courts have had frequent occasion to apply these principles since 1859, with respect to territory formerly belonging to Austria, and other governments, which it annexed during the process of unification. The rule laid down by them is as follows:

> "By virtue of public law a state is bound, independently of special conventions, by all obligations legally contracted by its predecessor in regard to territory to which it succeeds."

The Italian doctrine was adopted and applied by the *Conseil d'Etat* of France, by a decree of April 28, 1876.

In *Volume 1 of Fiore's New Treatise of International Law,* the author says (§356, page 313):

> "The annexing government succeeds to the rights and obligations resulting from contracts regularly stipulated by the ceding government in relation to the public interest of the territory ceded."

In *Fiore's International Law Codified,* recently published, the author says with regard to this subject:

> §152. "As to everything that is not regulated by an express provision, it must be deemed that the cessionaire state, assumes the condition of successor by universal title, of that which relates to both active and passive qualities, which can be deemed annexed to the exercise of the public power or which result from past contracts of the government of the ceding state, for the purposes of a public utility, relating to the ceded territory."

An interesting article by Professor Hershey of Indiana University, appeared in *American Journal of International Law for April,* 1911, entitled "The Succession of States," where on pp. 294, 295, he says:

> "There is a difference of opinion respecting the obligations of the new or annexing state to execute the contracts, concessions or franchises, etc., granted by the ceding or dismembered state within the ceded territory or territorial borders of the colony or province which

has achieved its independence. It would certainly seem that such contracts and concessions should, as a rule, be respected, and this has been the general practice of nations for at least a century; but international practice is by no means uniform, and the rule is not without important exceptions.

The general principle governing this important but much neglected subject has been correctly stated by a leading Italian authority 'The annexing government succeeds to the tracts regularly stipulated by the ceding government in the relative public interest of the territory ceded.'"

Mr. Norman Bentwich, an English writer of note, in his recent monograph on the *Law of Private Property in War, pp.* 70-72, says:

"The state acquiring territory is bound generally to take over the contractual obligations of the previous sovereign to individuals of corporations. But its right to disclaim contracts made directly for the purposes of war, which is stated by the Transvaal Commissioners, seems to be an equitable exception to the rule. * * * The Transvaal Commissioners laid down a better opinion when they say, following the American case United States vs. Soulard, that 'after annexation the rights of property remain undisturbed, and include those which arose out of the cession of Louisrights which lie in contract—those which are iana to the United States. Marshall, C. J., declared that 'property is supposed to embrace

executory as well as those which are executed.' The Italian Government after the acquisition of Venetia and Lombardy by the Treaties of Zurich and Lombardy, in which is undertook to satisfy all the local obligations of the provinces, gave the widest possible interpretation to its contractual obligations as the successor of the Austrian Government. It offered to consider the compensation for requisitions regularly made by the Austrians as a charge upon the State; and the Court of Cassation at Florence, in March, 1877, held that by public law the state which succeeds to part of the territory of another is bound, independently of special convention, by obligations legally contracted by the latter in relation to the territory. In May, 1896, the same court upheld his previous principle in an action brought against the Ministry of Finance by a contractor for the price agreed upon which the Austrian Government for the execution of certain fortifications round Venice. The practice of Italy shows a most thoroughgoing acceptance of the judicial rule without any saving provisions based on expediency. It is very generous, but it is probably a little ahead of common international usage.

"The practice in England, on the contrary, shows a neglect of the juridical rule, combined with a half-recognition of its authority, and is, probably a little behind international usage. In the terms of peace between England and the Boers she covenanted to devote £3,000,000 to cover war losses, which included losses by requisition and seizure of property by the ene-

my State; or, in other words, contracts made by the conquered Government. But Mr. Chamberlain declared, in the House of Commons, that this was 'an act of grace without admitting any liability.' Finally, there has come the declaration of the Divisional Court that 'there is no principle of international law by which, after conquest, the conquerer becomes liable, in the absence of express stipulation to the contrary, to discharge the financial liabilities of the conquered State incurred before the outbreak of the war. * * * ' the exact converse of the Italian Court's statement. It should be said, however, that the opinion of the English judges is much harsher than the practice of the English Government, which, as has been noted, has acted with peculiar generosity.

"The true positions of international usage at the present day would appear to be somewhere between the English and the Italian decisions. the guiding principle is that the conqueror who succeeds to the assets of the conquered state succeeds also to its liabilities, especially when they are directly connected with the assets. The maxim 'Res transit cum suo onere' applies to state as well as to private acquisitions. But this principal should be qualified by the following exceptions: 'The successor is not responsible for liabilities arising from (1) the torts of its predecessor; (2) contracts for war and the cost of war.'"

Hall's International Law, 5th ed. page 99.
Wheaton's International Law, 4th ed. page 46.

Halleck's International Law (Baker's 1878 ed.), Vol. II., page 504.
Calvo's Droit International, 4th ed. Vol. I., page 428; Vol. IV., page 404.
Heffter's International de l'Europe, 4th ed., pages 63-64.
Huber's Die Staatensuccession, s. 217.

In 1 *Phillimore on International Law* (3d Ed.), page 204, after quoting the views of Savigny, Hooker, Abbe Mably, D'Aguesseau and Montesquieu, it is said:

> "Applying this principle to international relations we learn that as one generation does not constitute a State, it is not merely by the obligations created by one generation that the *present* State is bound; the engagements of the *past,* whether arising from implied contract of long usage, or the express letter of treaty, or the pledge of the Executive Government howsoever plighted, are as stringent upon her as those of the present. The individual succeeds to rights and obligations which he had no share in obtaining or directing; and still more is this condition predicable of every corporate body. Nor is the greatest of all coporations, the State, exempt from the operation of a rule which is laid in the eternal constitution of things."

At page 210 the author says:

> "We have, then, this opinion of the continuity of the rights and obligations of a State confirmed by the unanimous authority of the

most celebrated jurists and statesmen of all countries. This accumulation of authorities must not be regarded as an idle parade of evidence, because, all has been already observed, a proposition which is maintained by the concurrent voice of eminent jurists of various civilized countries becomes *ipso facto,* as it were, a part of International Law."

At page 211 he says:

"It remains only to add a proposition which is, indeed, a corollary from the foregoing statements. If a nation be divided into various distinct societies, the obligations which, accrued to the whole before the division are, unless they have been the subject of special agreement, ratably binding upon the different parts. * * * "

The author cites the view of Dr. Heffter, a prominent German writer on International Law, who says:

"Moreover, that the acts of soveregnity of a former ruler, which are in conformity with the Constitution of the governed territory, are likely binding upon the successor to the sovereignty, can certainly not, according to International Law, be the subject of doubt."

Our department of State, has from time to time, had occasion to express its views concerning cases of a cognate character to that now presented, when called upon to intervene with other governments in behalf of our own citizens.

Nowhere have the doctrines bearing on this subject been more clearly and convincingly stated than in the exhaustive article entitled "Change of Sovereignty and Concessions," written by the Mr. Frances B. Sayre and published in the *American Journal of International Law for October,* 1918, at pages 705-743. It supports vigorously the "benefit test" to a liability asserted by the concessionnaire of a ceding State against a State which subsequently acquires sovereignty over the *locus* to which the concession relates. The article is especially valuable because, both in the text and in the notes, it refers to the very concession now under discussion. It also differentiates the doctrines supported by our courts from these prevailing in the English tribunals and explains why for technical reasons the latter are not in important respects applicable here.

As bearing on the proposition that the concession for the Visayan Cables and the obligations arising thereunder affected the *locus* ceded to the United States and that the obligation created by the concession was not one similar to a bonded debt resting upon the ceding State, attention is again called to the terms of that concession. It begins with a statement of motives as follows (Rec., pages 31, 32):

> "The importance of submarine telegraph communication in the Philippine Archipelago, and the necessity of establishing it between the Visayas Islands, which object has not been realized, in spite of the various 'Concursos' held for the purpose, led your Majesty's Government to propose the announcements of

a new 'Concurso,' for the construction and establishment of three submarine telegraph cables between the Island of Luzon, Panay, Negros and Zebu in those parts. * * *"

The concession throughout discloses that it relates solely to cables between the islands named and expressly provides that the subsidy is to be paid by the Chief Treasury Office of the Islands and not out of the treasury of Spain (Rec., pages 48, 52.

Findings III, V and VII, Rec., pages 88, 89, 90, 91), show that these cables were construed for the benefit of the Philippine Islands. Consequently they constituted a local improvement in every sense of the word; as much so as a public building, a railroad or highway system constructed in the Islands.

This fact of itself renders the doctrine advocated by Mr. Sayre especially applicable to the present case.

3. *Under general principles of jurisprudence the facts as found create an obligation on the part of our Government to the Claimant to pay the subsidy provided for in the concession it having availed itself of the general and special rights and privileges which have accrued to it under the terms of the concession.*

That the Government has derived and continues to derive the benefits and advantages from the cables constructed by the Claimant under its concession, which have been above enumerated, is admitted. The existence of the cable itself has not

only been of inestimable benefit to our Government, during the past twenty years, but, when the it first came into possession of the Philippine Islands, the cable facilities were practically indispensable to the proper and efficient conduct of the affairs of the newly acquired territory. That is a matter of history.

Viewed in the light of these facts, this case must be treated precisely as it would be if the questions now presented had arisen as betwen private individuals.

As was said by Judge Allen in *People* vs. *Stephens*, 71 N. Y., 549:

> "The State, in all its contracts and dealings with individuals, must be adjudged and abide by the rules which govern in determining the rights of private citizens contracting and dealing with each other. There is not one law for the sovereign and another for the subject; but, when the sovereign engages in business and the conduct of business enterprises, and contracts with individuals, although an action may not lie against the sovereign for a breach of the contract, whenever the contract, in any form, comes before the courts, the rights and obligations of the contracting parties must be adjusted upon the same principles as if both contracting parties were private persons. Both stand upon equality before the law, and the sovereign is merged in the dealer, contractor and suitor."

See also *Rhode Island* vs. *Massachusetts*, 12 Pet., 737, 738.

Regarding the case, therefore, exactly as it would be, if it arose betwen two private citizens, instead of between a claimant and a sovereign, we may be aided in the consideration of it by drawing a parallel between the facts here presented and those which are of frequent occurrence in everyday business experience.

(*a*) Let us assume that A, the owner of a building, leases it to B for a term of twenty years, at a stipulated rental of $10,000 per annum, giving to B not only the right of occupancy of the demised premises, but providing him with light and heat at less than the prevailing price, as a special inducement. After having entered on the demised premises, B assigns his lease to C, without special covenants of any kind. C thereupon enters into possession of the demised premises, and avails himself of the light and heat supplied at reduced rates. Can C avoid liability for the stipulated rent, for the term of his occupancy?

(*b*) Or let us suppose that A, the owner of land, enters into an agreement with B, whereby the latter is to erect upon the land a building, of which he is to be the lessee for a specified term. In the contract it is, however, stipulated that A is to have an easement in the building, for a period of twenty years, in consideration of which he covenants to pay B annually the sum of $10,000. A thereupon conveys the property and easement to C, who enters into possession and enjoyment of the easement. Can the latter, under these circumstances, avoid liability for the amount to be paid annually,

pursuant to the covenant, so long as he remains in occupancy?

We believe that both of these questions are to be answered in the negative; and inasmuch as the answer seems decisive of this case, a reference to the authorities which are applicable will prove useful.

It has been decided by a multitude of authorities that where a lessee assigns his estate in demised premises, the assignee is liable to the lessor, for the rent reserved in the lease, the assignee becoming liable by reason of privity of estate, even though there be no privity of contract.

In *Stewart* vs. *Long Island Railroad Co.*, 102 N. Y., 607, Judge Rapallo, one of the most distinguished jurists of his time, said:

> "Where a lessee assigns his whole estate without reserving any reversion therein in himself, a privity of estate is at once created between his assignee and the original lessor, and the latter has a right of action directly against the assignee on the covenant to pay rent, or any other covenant in the lease, which runs with the land."

Where, therefore, an assignee utilizes the demised premises, privity of estate is established, and as a sequence the assignee, so long as he remains in possession, becomes liable, not for use and occupation or upon a *quantum meruit*, but upon the covenants of the lease.

> *Walton* vs. *Stafford*, 14 App. Div., 312.
> *Cameron* vs. *Nash*, 41 App. Div., 532.

In *Frank* vs. *N. Y., L. E. & W. R. R. Co.*, 122 N. Y., 197, the Erie & Genesee Valley Railroad Company leased its road to Woodruff for the unexpired term of its charter. The lessee agreed to pay as rental, interest on certain mortgage bonds previously issued by the lessor, and to pay the mortgage debt at maturity. Woodruff executed a lease of the same property to the Erie Railway Company. The lessee took possession and thereafter operated the road as part of its system. It executed a mortgage on all of its property, including its leasehold interest. The Erie Railway Company subsequently becoming insolvent, action was brought for its dissolution, a receiver being appointed, who took possession of its property, including that covered by the lease. The mortgage was foreclosed and the property sold to purchasing trustees, who conveyed it to the New York, Lake Erie & Western Railroad Company. The leasehold was not, however, included in the property sold, or even in the notice of sale. The receiver, from the time of his appointment, operated the leased road. After the transfer, under the decree of foreclosure, the new company operated it.

In an action to foreclose the mortgage given to secure the bonds issued by the Erie & Genesee Valley Railroad Company, it was held, that when the receiver took possession and operated the leased road, he became liable in effect as assignee of the lease, during the period of his occupation; that even though the lease was not sold at the foreclosure sale, the new company, having taken possession of the property covered by the lease and having operated the leased road, became *prima facie* liable, as assignee of the lease, to pay

the rent therein stipulated during the term of its occupancy. In the course of his opinion Judge Vann said:

> "The appellant company, right after its organization, entered into possession of the property covered by the lease, and it has remained in possession and has operated the railroad ever since, yet it failed to show upon the trial in what capacity it entered or by what authority it operated the road. * * * It cannot be heard to say that it entered as trespasser, for that would be asserting its own wrongful act as a defense to the claim of one who had the right to waive the tortious element, if it existed, and to insist upon the entry as valid with all the consequences that may be implied therefrom. * * * What presumption arises from the fact of possession and occupation under these circumstances? Where a person other than the lessee is shown to be in possession of the leasehold premises, the law assumes that the lease has been assigned to him. * * * It does not, however, presume that the assignee entered into any express covenant to pay rent, or otherwise than through privity of estate. The appellant company, therefore, under the facts proved, became *prima facie* liable as assignee of the lease during the period that it operated the road. This involved the obligation to perform all covenants running with the land that were broken during said period, including the covenant to pay rent, or that which stood in the place of rent. * * * The appellant com-

pany, therefore, is to be regarded as assignee of the lease during the time that it has occupied the leasehold estate, and as such liable for the rent accruing subsequent to the date of entry, at least until the new arrangement was made, which is alleged to have relieved it from further liability to pay rent as stipulated in the lease."

To the same effect are

Pollard vs. *Shaffer*, 1 Dallas, 210.
Fennel vs. *Guffey*, 155 Pa. St., 38.
Burnett vs. *Lynch*, 5 B. & C., 589.
Astor vs. *Lent*, 6 Bosw., 612.

Not only is this principle applicable in favor of a lessor, as against an assignee of a leasehold interest, but it also applies in favor of a lessee, as against an assignee of the reversion.

Thus in *Schoellkopf* vs. *Coatsworth*, 55 App. Div., 331, affd. 166 N. Y., 77, it appeared that a lease for a term of fifteen years, required the lessee to erect certain specified buildings on the demised premises, within a definite period, and the lessors were to pay to the lessee "at the expiration of the term above created" the full value of such buildings, unless notice of the lessors' intention to take possession of the demised premises were given, at least six months before the expiration of the term. The lease provided that in the event of a failure to give such notice, the lease should be continued for the term of five years from the expiration of the original term, on the same terms and conditions "hereinbefore expressed," except

as to the amount of rent to be paid. The lessors subsequently assigned their reversion, and neither they, nor their assignee availed themselves of the right to terminate the lease, at the end of the original term. It was held that the obligation to pay for the buildings upon the demised premises was not discharged, and that upon the termination of the lease by the assignee of the reversion, he was liable under the covenant therein contained, which required the lessors to pay the value of the buildings. The Court said:

> "It must be assumed, we think, that the parties to this action stand in precisely the same relation towards each other as did the original parties to the lease; that is, the plaintiffs, as assignees of the lease, have succeeded to whatever right, title or interest that instrument conferred upon such lessee, which the defendants, having come into possession of the demised premises without having parted with any consideration therefor, with notice of lease, and having thereafter received the benefits accruing under the lease, are chargeable with the lessors covenants as their successors in title (*Greason* vs. *Keteltas*, 17 N. Y., 491).

In the latter case, the circumstances of which were similar, Judge Selden said:

> "By the lease in question the parties mutually covenanted that, at the expiration of the term, the value of the buildings should be ascertained by two sworn appraisers, one of whom should be chosen 'by each of the said parties.'

> There is no doubt that this was a personal covenant, and binding as such upon the trustees; and as the defendant, Keteltas, had succeeded by substitution and survivorship to all the rights of the original trustees, this covenant, which attaches itself to the estate, is obligatory upon him so long as he retains the title to the premises."

Applying these principles to the present case we find, that the United States succeeded Spain in sovereignty over and ownership of the Philippine Islands, and succeeded to all of the rights acquired by Spain under its concession to the Claimant.

We will assume, for the present, that the United States was under no obligation to avail itself of any of the rights of privileges conferred, by the terms of the contract between Spain and the Claimant, and that it might have declined to make use of the benefits and advantages accruing under such contract. Instead of pursuing that course, however, the United States, immediately on taking possession the Philippine Islands, assumed control over the cable lines constructed and operated by the claimant, "availed itself of all of the benefits and privileges thereof," and used, and has ever since continued to use, the cable lines for its governmental and other purposes, under the terms of the concession, all the conditions of which have been actually fulfilled and performed by the Claimant.

Hence, even though it might be argued, that there was no privity of contract, between the United States and the Claimant, there has arisen a privity of estate, which, so long as that privity

continues, obligates the former, to perform the covenant contained in the contract between Spain and the Claimant.

Independently of the obligation which springs from the principle thus far considered, growing out of the analogy suggested by the doctrine deduced from the law of landlord and tenant, the same result would follow under the principles of *quasi* contract, resulting from the circumstance that the United States has, ever since it succeeded to the Spanish sovereignty, availed itself of the benefits and advantages of the Claimant's contract and has enjoyed the special advantages which it conferred and which have been fully explained above.

As between individuals, such a state of facts would result in the implication of a contract, by the recipient of these benefits, to be bound by the terms of the agreement, from which these advantages are derived. The acceptance of benefits so secured involves the obligation of bearing the correlative burden imposed by the same contract.

No more than an individual will the Government be permitted to blow hot and cold; to adopt and renounce at one and the same time; to affirm that part of an arrangement which is advantageous. When it sees fit to accept benefits, it must be deemed to have elected to take them *cum onere*.

It has been held that even where a State has been induced to enter into a contract by fraud, if it nevertheless, with knowledge of the fraud, continues to take the benefits of the contract, it is not thereafter permitted to repudiate it, but is bound to perform its provisions; thus placing it

in this regard, on a parity with private individuals.

People vs. *Stephens,* 71 N. Y., 527;
Masson vs. *Bovet,* 1 Denio, 69;
Vernol vs. *Vernol,* 63 N. Y., 45;
Mills vs. *Hoffman,* 92 N. Y., 181, 190;
Baird vs. *Mayor, &c., of N. Y.,* 96 N. Y., 589.

In *Cobb* vs. *Hatfield,* 46 N. Y., 536, Judge Allen thus expressed the doctrine:

> "The taking of a benefit is an election to ratify it and concludes him. He cannot be allowed to deal with the subject-matter of the contract and afterward disaffirm it. The election is with the party defrauded to affirm or disaffirm; but he cannot do both."

This principle applies *a fortiori* where there is no pretence of fraud; where no attack is made on the *bona fides* of the contract; where there is no pretence that it was the result of collusion, undue influence, or of the taking of an unfair advantage, and where the beneficial nature of it is conceded. In such a case it would seem as though when one, whether an individual or a government, undertakes to enjoy the benefit of such a contract, it is tantamount to an adoption of its provisions, and that even in the absence of an express contract, an obligation *ex aequo et bona* to undertake the performance of the burdens, which are reciprocal to the advantages derived will be implied.

The underlying principle has been well stated by Mr. Justice Kennish in *Anderson* vs. *Caldwell,* 242 Mo., 201, 207, 146, S. W. Rep., 444:

> "Under the common law system of pleading, one form of civil action was assumpsit. In that form an action could be maintained upon a state of facts from which a contract would be implied by law. It was not essential that there was in fact a contract in the sense that the parties had entered into an agreement, either express or implied, as to the subject-matter of plaintiff's cause of action. All that was necessary was that defendant had received benefits which imposed upon him a duty to the plaintiff, so that, upon equitable grounds, a promise was implied by law that the defendant should respond to the extent of the benefits received. Such a relation between the parties, because of the promise which had not been made in fact, but which the law implied, has been termed a quasi contract."

This doctrine was very fully considered in *Board of Highway Commissioners* vs. *City of Bloomington,* 253 Ill., 164, 97 N. E. Rep., 280, 284, by Mr. Justice Vickers, who said:

> "After subtracting express contracts and contracts implied in fact, there is still left another large class of obligations, to enforce which the action of general assumpsit is a well established remedy. The principle upon which this latter class of obligations rests is equitable in its nature, and was, like most other

equitable principles, derived from the civil law. This obligation was under the civil law designed 'quasi contractus.' Stated as a civil law principle, it was an obligation similar in character to that of a contract, but which arises not from an agreement of parties, but from some relation between them, or from a voluntary act of one of them, or, stated in other language, an obligation springing from voluntary and lawful acts of parties, in the absence of any agreement." *Howe's Studies of Civil Law,* 171; *Morey on Civil Law,* 371. In quasi contracts the obligation arises, not from consent, as in the case of contracts, but from the law of natural equity. The term was not found in the common law, but it has been taken by writers upon the common law from the Roman law, and may be considered now as quite domesticated, even to the extent of being used as the title of a very valuable common law text book—*Keener on Quasi Contract.*' * * *

"The class of obligations now under consideration, and which are treated in works on contracts as 'contracts implied in law,' or quasi contracts, are recognized and enforced by common law courts by means of a general assumpsit. The liability exists from an implication of law that arises from the facts and circumstances, independent of agreement or presumed intention. *Pracht* vs. *Daniels,* 20 Col., 100 36 Pac., 845. In this class of cases, the notion of the contract is purely fictitious. There are none of the elements of a contract that are necessarily present. The intention of the

parties in such cases is entirely disregarded, while in cases of express and implied contracts in fact the intention is of the essence of the transaction. In the case of contracts, the parties fix their terms and set the bounds upon their liability. As has been well said, in the case of contracts, the agreement defines the duty, while in the latter class of cases 'the duty defines the contract.' *Hertzog* vs. *Hertzog*, 29 Pa., 468; *Columbus, Hocking Valley & Toledo Ry. Co.* vs. *Gaffney*, 65 Ohio St., 104, 61 N. E., 152. * * * The action is in form ex contractu; but, the alleged contract being purely fictitious, the right to recover does not depend upon any principles of privity of contract between the plaintiff and the defendant, and no privity is necessary. 2 *Page on Contracts*, §789, and cases there cited. The right to recover is governed by principles of equity, although the action is at law. The action is maintainable in all cases where one person has received money or its equivalent under such circumstances that in equity and good conscience he ought not to retain it, and which, *ex aequo et bono*, belongs to another."

This principle has been frequently applied by this Court.

United States vs. *Russell*, 13 Wall., 623.
Hollister vs. *Benedict & Burnham Mfg. Co.*, 113 U. S., 59.
United States vs. *Palmer*, 128 U. S., 262.
Coleman vs. *United States*, 152 U. S., 99.

It proceeds on the same equitable considerations, as the civil law doctrine of enrichment, which has been accepted as applicable to cases like the present.

Thus in the recent work of *Professor Cavalieri*, entitled *"The doctrine of Succession of a State by a State,"* Pisa 1910, page 135, this great jurist, laid down what we believe should be accepted as the governing principle in the present case:

> "The maxim that nobody is permitted to enrich himself, to the damage and injury of another, is the expression of a sentiment of equity and of justice, so elementary, that it is but logical that it should be recognized, in one form or another, and that it be given the sanctions contained in the codes of various nations, which are founded upon it. It is given the sanction, which may well be called that of natural right, always strongly accentuated, constituting the basis and the foundation of all property and wealth, condemning that which does not find its root in natural justice—justice which gives to every one his due, and which permits nobody to enjoy with impunity that which belongs to another. The principle that nobody should be permitted to enrich himself unduly, belongs to that fundamental patrimony which lives in the juridical conscience of every people, and by which it attains its best support."

III.

The contention made below that the Claimant has not complied with the terms of the concession is without merit.

(a) As to the ten per cent. tax.

Article 16 of the Visayas concession provides that the Company shall pay the State a tax of ten per cent., which, in its application to cablegrams, is fixed after first deducting the amount of the expenses for the maintenance of the stations, calculated at £6,000 per annum, such expenses not exceeding the amount specified. Claimant contends that it is entitled to deduct as a flat charge, as the expense for maintenance of the stations, £6,000 annually from the receipts realized, before the payment of ten per cent. is enforceable. This was the practical interpretation given by both parties at the time of the settlement made in 1905 (Record, pages 94, 95, 96, 97-98). It is likewise the reasonable interpretation of the language employed in the concession. In the protocol relating to the concession it is stated (Record, page 46).

> "The Company shall pay the State the ten per cent. which, by the application of the uniform rate of fifty centimes of a franc per word, the Visayas Cables yield; after first deducting the amount of the expenses for the maintenance of the six stations, *reckoned at* £6,000 *per annum.*"

In the various communications made by Claimant to the defendant it was asserted that the con-

tract sanctioned the deduction of £6,000 for working expenses, and stipulated that the tax of ten per cent. applied to the balance of the earnings. No exception seems to have been taken to this contention; nor is there any proof that at any time the actual expenses were less than £6,000 per annum (Record, pages 93 98). No question was raised, as to whether or not the expenses for maintenance of stations was less than £6,000 annually. The terms of the contract were such as, *prima facie* at least, to entitle Claimant to make this deduction.

It is difficult to understand, however, the legal theory on which defendant, after failing to make any payments on account of the installments of subsidy accruing since January 1, 1905, can assert the failure to credit a larger sum for the ten per cent. tax than has been conceded by the Claimant can rely on that fact to defeat the claim in its entirety. Even were the deduction of the entire sum of £6,000 for expenses eliminated, ten per cent. of that amount would be £600 only as against an unpaid annual subsidy of £4,500. At the most this would raise the question of the amount that should be credited to defendant.

(*b*) *As to the claim that the surtax was not paid by the Claimant.*

The Court below found that, up to the end of 1915, the surtax prescribed by Article 18 of the concession, amounting to £7,194/2/2, "was paid to the local authorities by regular monthly payments in the local currency" (Record, page 98).

This so-called surtax is not one imposed on the Claimant by any legislative act, but constituted an

amount reserved, by the terms of the concession, to the Government out of the moneys received by the Company from the public for the transmission of telegrams. Whatever was thus paid constituted a diminution of Claimant's legitimate receipts.

(c) As to the effort to minimize the importance of the extension of the new cables.

Defendant evidently misapprehends the circumstances which led to the expenditure by Claimant of £38,000 in the construction of new cable lines to supersede the land lines. These land lines were not constructed by Claimant. They did not belong to it; nor was there any obligation on its part to maintain them. They were originally the property of the Spanish Government, and became the property of the United States when it assumed sovereignty over the Phillippine Islands.

This appears from the terms of the concession of April 14, 1897. Article 18 expressly refers to "the land lines belonging to the Government in the Islands of Panay, Negros and Zebu" (Record, page 56). It was because these land lines were subjected to the hostile raids of Aguinaldo and others in insurrection against the United States and were "unprotected, badly constructed, and inefficient," that Claimant, in order to afford the defendant and the public telegraphic service which would be free from interruption, incurred this large expenditure, which inured to the benefit and advantage of the defendant and of the mercantile community (Record, pages 89, 90, 91).

IV.

In the argument made for the Government in the Court below, there was a misconception of the facts and the law in other important particulars.

(1) We are not seeking to enforce a monopoly or any other rights under the Hongkong concessions. They were introduced into the record by way of historical explanation and to show that, pursuant to their several provisions, the defendant and the public, by means of the cable first constructed from Hongkong to Balinao and later extended from Balinao to Manila, were placed in communication with the entire world through the universal telegraphic system maintained by Claimant.

(2) Nor are we seeking to recover here, because of the construction by Claimant of the Visayan Cables, but by reason of the continuous working of those cables by it. Hence the argument, that when Spain laid down the sovereignty of the Philippine Islands a liability existed on its part to the Claimant for the full amount of the several annual subsidies thereafter accruing for the payment of which provision was made in the concession of April 14, 1897, is manifestly unsound. Throughout that instrument it clearly appears that the *working and maintenance* of the cables for the period of twenty years was the essential consideration on which the payment of the annual subsidy depended (Record, pages 32, 42, 47, 48, 50, 52). Construction alone without the working and

maintenance of the cables gave rise to no liability.

The schedule of conditions has reference to "the establishment and *working* of submarine telegraph cables which will connect the Islands of Luzon, Paney, Negros and Zebu" (Record page 50). By Article 9 the Concessionaire "undertakes to work, of his own expense and risk the cables for a period of twenty years" (Record, page 52), Article 10, which creates the subsidy, provides that it shall be "payable monthly in twelve instalments, during the whole term of the *working* of the cables" (Record, page 52). The acceptance of the conditions relates not only to the construction and establishment, but also to the *working* of the cables (Record, page 60). Hence the liability which is sought to be enforced in this cause is not one which accrued or which could have been enforced during the existence of the Spanish sovereignty over the Philippine Islands, but only arose after their occupancy by the United States.

(3) The statement made on behalf of the defendant, that it declined the offer of free rates for the reason that it would not recognize the Spanish concession, is likewise incorrect. Down as January 1, 1905, the United States enjoyed and accepted the benefit of the free transmission of its official messages. From March, 1899, down to 1915 it received the surtax created by the terms of the concession earned and payable by the Company on private telegrams. There was at no time a refusal to recognize the Spanish concession. On the contrary, instead of refusing to recognize the Spanish concessions, the Government merely abstained from giving a definite decision on the subject.

By receiving and enjoying the benefits and advantages of the concession, however, the defendant, by acts more eloquent than words, in legal effect adopted it.

The correspondence referred to in Finding IX took place in 1899. At that time definitive action was held in abeyance. It was, however, followed by the settlement made in 1905, in consequence of which £31,712/10/6, or approximately $150,000, of the Claimant's money, payable solely under the terms of the Visayan concession, found its way into the treasury of the United States and has ever since been retained by it. If that does not constitute an adoption of the obligations created by the concession of April 14, 1897, a proper characterization of the act would be difficult.

(4) It has also been contended for the Government that the settlement of 1905 is a mere matter of account and payment and therefore does not conclude the Government and *Wisconsin Central R. R. Co.* vs. *U. S.*, 164 *U. S.*, 205; *U. S.* vs. *Harmon*, 147 U. S., 275 and *Chorpenning* vs. *U. S.*, 94 U. S., 399; 102 U. S., 426, 441, are cited in support of the proposition. They have no application here. It is true that all of them merely involve the acts of accounting officers.

The settlement of 1905 does not, however, come within the rule invoked. Claimant asserted its right to be paid subsidies to the amount of £27,000, which had accrued under the Visayan concession. The Government was entitled under the terms of that concession to £31,712/10/6. That left a balance standing to the credit of the United States Government of £4,712/10/6, which, at the instance

of the Government, was paid to it by Claimant, was receipted for by the Government on September 8, 1905, and has ever since been retained by it (Record, pages 93 to 96). The Government thus received from Claimant because of the concession substantially the sum of $150,000.

This was not a payment by the Government, but a payment to and acceptance by it. It was a deliberate act. It constituted the acceptance by the Government of a substantial benefit and advantage. All of the facts were communicated by Claimant and were understood by the Government. Fourteen years have passed, during all of which time it has retained these benefits. To declare at this late day that the Government may take and keep the profits derived from the concession, and pursuant to its terms, that it may recognize its own obligation thereunder so long as the profits received exceeded the amount which it was bound to pay and then repudiate that obligation, when the balance is shifted, is contrary to law, equity and good morals. This is not a matter of accounting by a Government agent, but the act of the Government itself, which by its continuing assertion of the right to retain what it has received under the concession recognizes its binding force. No more than a private person can the Government at one and the same time accept benefits and reject obligations springing from the same instrument. The retention of the sums received constitutes an election to regard the terms of the concession as reciprocally operative.

V.

The Claimant expressly disclaims the assertion of liability under the Treaty of Paris. At the same time it denies the contention made in the Court below that at the time when the treaty was under negotiation the United States refused to assume any liability under the cable concessions and stipulated to pay $20,000,000 in satisfaction for improvements, made in the Philippine Islands.

A reference to Senate Document 62, Fifty-fifth Congress, Third Session, discloses the error of the contention. It there unmistakably appears that it was not the purpose of the American Commissioners to absolve our Government from any of the obligations imposed upon a sovereign nation under the recognized principles of international law when it acquires by cession the territory of another sovereign. This is shown by the final phases of the negotiations as disclosed by the protocol.

At the conference of December 6, 1898, the Spanish Commission proposed two articles, one relating to grants and contracts for public works and services and the other to public contracts. It asked that our Government should assume all the rights and obligations attaching to the Spanish Government pursuant to such contracts. One of the contracts listed was the cable contract from Manila to Hongkong. After reciting these proposals, the protocol continues:

"The President of the American Commission stated that the American Commissioners were con-

strained to reject these articles. The United States do not propose to repudiate any contract found upon investigation to be binding under international law; but no such clauses as now proposed had been inserted in treaties heretofore made by the United States with Spain, France, Mexico and Russia for the acquisition of territory, and it might be assumed that the United States would deal justly and equitably in respect of contracts that were binding under the principles of international law." (*Senate Document No.* 62, *pages* 240, 241.)

Finally, on December 8, 1898, two days before the signing of the treaty, the American Commission explained its refusal to insert any clause in the treaty with regard to these contracts, saying:

"The American Commission felt constrained to reject the articles tendered by the Spanish Commissioners with respect to contracts entered into for public works and services. It took this step because the nature, extent and binding obligation of these contracts are unkown to the American Commissioners and they again disclaim any purpose of their Government to disregard the obligations of international law in respect to such contracts as investigation may show to be valid and binding upon the United States as successor in sovereignty in the ceded territory." (*Senate Document No.* 62, page 262.)

There is nothing in the protocol which in any way justifies the argument that the payment by our Government to Spain of $20,000,000 was in the slightest degree intended to operate as a liquidation of any rights of Claimant under its concessions or had any relation to any obligations which might thereafter arise in consequence of the working of the cables, or any of the acts of the United States

in respect thereof. That sum was paid solely in consideration of the relinquishment of Spanish sovereignty over the Philippine Islands, so that it might never be contended that the United States had annexed foreign territory by conquest—one of our proudest traditions.

VI.

The judgment of the Court of Claims should be reversed and the case remanded with directions for the rendition of judgment in favor of the appellant as prayed in its petition.

LOUIS MARSHALL,
Appellant's Counsel.

Appendix A, being excerpts from an Article by Francis B. Sayre Esq., published in the American Jounnal of International Law for October 1918.

CHANGE OF SOVEREIGNITY AND CONCESSIONS.

I. General Principles.

The principle of international law as announced by Chief Justice Marshall in the famous Percheman case and supported by a long list of American decisions is that no confiscation of private property in land results from a mere change of sovereignty. Will this principle be sufficient and adequate to protect private property rights in concessions and contracts? In other words, since contracts no less than land may constitute valuable and irreplaceable private property, should any distinction be made, in the application of the Percheman principle, between land and contracts?

Where the parties to the contracts are private persons or corporations there seems to be no essential distinction between property in the form of land and property in the form of contracts. In either case the change of sovereignty must, of itself, effect no forfeiture; where, for instance, territory passes out of the sovereignty of State X and under the sovereignty of State Y, just as State Y must not allow the change of sovereignty to affect the ownership of land held by a private individual, A, within the ceded territory, so State Y must not allow it to affect the ownership of contract rights,

held by A against some private obligor or debtor, B.

But where the obligor or debtor under the contract is not a private person or corporation but the state itself, quite a different question arises. If, in the example above, B, the obligor, is not a private individual or corporation, but State X itself, although unquestionably State Y is bound not to allow the change of sovereignty to destroy A's contract rights will State Y succeed to the former obligation of State X upon the contract itself? Granting that State Y succeeds to the position of State X as the enforcing power which gives to all contracts their value, does it also succeed to the position of State X as the obligor or debtor under the contract? May not the ceding state, the original party to the contract, still remain bound upon it? Here lies a question of true succession; and this question cannot be solved by the principle of the Percheman rule. For the Percheman rule merely says that private property upon change of sovereignty shall not be confiscated; but there is no confiscation if *either* the ceding or the receiving state remains bound by the concession; the Percheman rule, therefore, is of no value in determining which one of the two shall be bound. For instance, the Percheman rule would be of little help in the case where a public deposit of money, required by State X from all those doing business within a certain district, is retained by State X after the cession of the district to State Y. After the cession it is clear that State Y cannot be held liable for the return of the deposit upon the theory that international law protects private contract rights from confiscation upon a change of sovereignty.

There is no confiscation, because State X still remains liable in theory, whether, as a practical matter, it is possible to collect from State X or not. Some principle other than that of the Percheman case must therefore be resorted to in order to ascertain whether or not the receiving state does succeed to the liability incurred by the ceding state through the grant of concessions and franchises.

It must be confessed that judges and writers do not always make a clear distinction between these two quite different principles in the law of succession; there is evident a tendency to apply to all cases alike the comprehensive principle of the Perchemen case; to examine whether any given concession or contract constitutes "property" or not, and, if it can be said to fall within the undefined category of "property," to decide that therefore it cannot be confiscated, and hence the receiving state must succeed to the obligation of the contract. (4) The difficulty with this mode of reasoning is that, even were it logically sound, it rests the whole case upon the determination of what constitutes "property"; and the definition of property is a will-o'-the-wisp which is all but impossible to attain. For half a century the courts have been struggling to define the meaning of prop-

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NOTE "(4) Innumerable examples of this commonly adopted viewpoint might be cited. In speaking of concessions granting the exclusive right to lay cables, the United States Attorney General, in an opinion rendered on June 15, 1899, said:

"Concessions of this kind, which carry with them exclusive rights for a period of years, constitute property of which the concessionary can no more be deprived arbitrarily and without lawful reason than it can be deprived of its personal tangible assets" (22 Op., 518).

For a still better example, see the case of Sanchez vs. United States (216 U. S., 167).

erty under the Fourteenth Amendment to the Constitution of the United States; if it has been found impossible during that time to reach a common national understanding, sufficiently precise to decide all cases arising under this amendment, is it likely that municipal courts would agree upon any exact understanding of international validity? The truth is, not that promises will be enforced if they constitute "property," but rather that promises constitute property if they can be enforced.

II. The General Rule as to Concessions.

If, then, the Percheman rule, or, in other words, the "property test," is not adequate for determining the effect of a change of sovereignty upon concessions and contracts where the state itself is obligated under the contract, what is the general principle upon which these cases must be decided?

Some writers would have it that the receiving state succeeds to *none* of the burdens and contract obligations undertaken by the ceding state. The great majority of cases, however, do not lend support to this contention, which seems also to be out of keeping with the modern trend of international law, with general principles of fairness and equity, and with considerations of international expediency.

In the days of Rome, war was considered as a legitimate method by which a state might replenish its own coffers; the captives of the Roman army were sold into slavery, and all captured immovables, not hitherto owned by Roman citizens, became the property of the Roman state. In those days there was no such thing as protection of enemy private property from confiscation. Since then our civilization has progressed; unless the

German arms prove victorious, we have abandoned the idea that the citizens of a conquered state are the legitimate prey of the victor state for its self-enrichment. The whole trend of modern international law is consistently to protect the individual citizens of a conquered state from injuries to their persons, their property, or their rights, as far as military considerations will permit.

Furthermore, general considerations of fairness and equity do not accord with the view that no obligations pass to the receiving state. Where, for instance, a corporation has in good faith spent of its substance for the construction of a railway for the exclusive benefit of the territory later ceded, expecting its return under concessions granted it in consideration thereof, it would seem neither fair nor equitable that the new sovereign should be allowed to retain the benefit of the railway and avoid any liability for its cost. One of the fundamental principles underlying all equity is that the benefit shall not pass without the burden.

In the third place, considerations of international expediency would seem to require the adoption of some clear principle of state succession to obligations. After cession or conquest, the territory ceded becomes a part of the receiving state; and it is to its vital interest that its rule be characterized by the generosity which stimulates contentment rather than the severity which breeds hate.

Since the commercial prosperity and industrial fabric of the ceded territory henceforth will go to make up part of the national existence of the receiving state merely enlightened self-interest would suggest that such a rule of succession be adopted

as would result in the minimum disturbance of business and commercial life. The injury caused to business by lack of protection of corporate or private property is by no means confined to the intrinsic worth of the property confiscated; the real injury lies in the depression and disarrangement of the whole commercial and economic fabric through uncertainty and apprehension. A rule of international law to the effect that no obligations pass to the receiving state would therefore seem out of keeping with the needs of the modern industrial world, and with the desire and common interest of all nations to build up international credit so that state obligations will be given a mixmum valuation.

In view of these considerations, there seems sound reason behind the rule that the receiving state does succeed under international law to certain of the ceding state's obligations—a rule which is supported by the majority of courts and the great weight of authority of text writers. As to how far this principle is to be carried, however, one finds a wide difference of opinion.

The principle was announced in general terms as early as 1812 by Mr. Adams, the United States Secretary of State, who wrote:

> "The conqueror who reduces a nation to his subjection receives it subject to all its engagements and duties towards others the fulfillment of which then becomes his own duty. However frequent the instances of departure from this principle may be in point of fact, it cannot, with any color of reason, be contested on the ground of right." (1 Warton, 19.)

Subject to a number of important exceptions, which will be considered later, the general principal which the United States has followed on various occasions has been that where the concession is clearly related to the territory ceded, and granted purely for its benefit, the receiving state succeeds to the obligations as well as to the rights of the ceding state.

Following the Spanish-American War in 1898 the question concerning concessions and franchises granted by the Spanish Government prior to 1898 was frequently raised. For instance, during the United States military occupation of Cuba, the United States War Department was called upon to determine whether to respect, as binding upon the United States, a concession to construct a canal along the Matadero River in Cuba, which had been granted in due course by the Spanish authorities before the signing of the definitive peace treaty with Spain. The War Department held that the concession was binding upon the United States. (9) This decision rested upon the carefully considered opinion of Mr. Charles E. Magoon, the able

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NOTE (9) See Magoon's Reports, pages 571, 579.

"The concession was held to be binding upon the United States even through a final decree granting the concession was not signed by the Spanish Governor General until Sept. 28, 1918, a month and a half after the signing of the peace protocol (Aug. 12, 1898), and at a time when Spain was making arrangements to withdraw from the island No question of bad faith on the part of the Spanish authorities decreeing the concession was, however, suggested. Had the final decree granting the concession been granted after the signing of the definite peace treaty on Dec. 10, 1898, another question would have been raised. The action of the United States War Department, of course, did not prevent the question of the validity of the grant under the Spanish law being raised in the Cuban courts."

law officer of the Bureau of Insular Affairs, who held office during the period following the Spanish American War, and whose official reports to Mr. Elihu Root, the Secretary of War, contain admirable discussions of many phases of the problem of succession.

In an opinion rendered on July 10, 1898, Mr. John W. Griggs, the United States Attorney General, considered the case of a concession to construct certain tramways in the City of Havana, Cuba, granted in due course by the Spanish authorities before the American occupation of the Island. The Attorney General held that such a concession was binding upon the sovereign which succeeded Spain; and hence he advised that the Secretary of War, in command of the forces in occupation of Cuba, should not without adequate cause prevent the owners of the concession from proceeding with the construction of the tramway. (22 Op. 520.)

Similarly, the Attorney General held that if Spain prior to 1898 had granted to a private company the exclusive right to lay cables to Cuba, the concession would be binding upon the United States Government, and would bar the latter from granting similar privileges to other countries (11)

Note (11) In an opinion rendered on June 15, 1899, the United States Attorney-General said:

"If, therefore, the Western Union Telegraph Company has an exclusive grant applicable to Cuba for cable rights, which grant has not expired, it would be violative of all principles of justice to destroy its exclusive right by granting competing privileges to another company" (22 Op., 518). This opinion was quoted by Mr. Magoon and followed by the United States War Department in its action regarding the Cuba Submarine Cable Co. (Magoon's Reports, pages 281, et seq.).

III. Concessions, to Bind the Receiving State, Must be for Benefit of Locus Ceded.

That a concession may not be binding upon the receiving state, it is not sufficient merely that it be related or attached to the territory ceded. As has already been suggested, it must also have been granted for its sole benefit. If the concession relate to an enterprise, undertaken for the imperial or national benefit of the ceding state rather than for the local benefit of the territory ceded, the receiving state may refuse liability upon the obligation.

In the Manila Railway Company cases, the Manila Railway, a British corporation, had agreed to build a railway in the Philippine Islands, and had been granted by the Spanish Government a concession for that purpose, by the terms of which Spain agreed to guarantee eight per cent. annual interest on the capital employed in the construction of the railway. After the Spanish War, the British Corporation, through the British Ambassador at Washington, sought to secure from the United States Government the guarantee of the eight per cent. annual interest. (14) The Attorney-General, stated the case was referred for an official opinion, stated that, as a general rule, if obligations are created

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Note (14) Mr. Magoon, to whom the case was first referred for decision, seems to have felt that the payment of $20,000,000 by the United States to Spain relieved the United States Government of any liability for obligations undertaken by Spain for the benefit of the Philippines. But it is difficult to see how the United States could discharge its international obligations to third parties by the payment of any amount of money to Spain (see Magoon's Reports, page 177).

for the benefit of the *locus ceded*, they become binding upon the receiving state. He says:

> "It seems to be the consensus of opinion among authorities on international law that, upon the separation of part of a country from the sovereignty over it, debts created for the benefit of the departing portion of the country go with it as charges upon its government" (Hall's International Law (4th ed.), page 98; Rivier, Droit des Gens, tome 1, pages 70, 72; Calvo, Le Droit Inter., tome 1, sec. 101; tome 4, sec. 2487; Phillimore's Inter. Law (2nd ed.), vol. 1, pt. 2, secs. 136, 137; The Tarquin, Moore on Arbitration, vol. 5, page 4617; Lawrence's Wheaton's Inter. Law, pages 53, 54; Wharton's International Law Digest, sec. 5; Anglo-Saxon Review, June, 1899, Mr. Reed's article concerning the Philippine debt, etc.; Dana's Wheaton's Inter. Law, sec. 30, note; Glenn's International Law, sec. 28; Field's International Code, secs. 24, 26, Gardner's Institutes of Inter. Law, page 52; Senate Doc. 62, Fifty-fifth Congress, third session, pt. 1, page 500).

Upon an examination of the facts of the Manila Railway case, however, he found that the building of the railway was, as a matter of fact, not exclusively for the benefit of the Philippine Islands, but that the project was also entered into for Spanish imperial purposes, particularly for defense and imperial military operations. He therefore held that the United States Government was not, as a matter of strict law, legally bound by the concession.

Whether or not the Attorney-General was correct in his finding of fact, the legal principle upon which he based his decision would seem to be sound.

But although the Attorney--General found, as a matter of fact, that the concession was granted by the Spanish Government not to secure solely local benefits, yet he held that inasmuch as "the provinces of the Philippines have undoubtedly received and they retain and will retain, the chief benefit from the railroad" the United States was "equitably" bound to assume the obligation, presumably on the theory of unjust enrichment. He also found that the Spanish Government before the session had charged two-thirds of the obligation upon the local revenues of the Philippine Islands, and he therefore held that, inasmuch as the islands received the main part of the benefit, they were "equitably" bound to guarantee two-thirds of the interest; United States officials would therefore be entitled even without authority from Congress to satisfy this "equitable" obligation out of the Philippine treasury. Although, since Continental Law knows of no equitable obligation which is not enforceable legally, it may be questioned whether the term "equitable obligation" is a happy one to introduce into international law, yet the theory of unjust enrichment has a real place in this subject, and should not be lost sight of. Where, for instance, as in the Manila Railway case, a concession has been granted for imperial and not for local benefit, if the *locus* ceded does, as a matter of fact, receive an actual benefit, courts may upon this theory require the receiving state to pay to the

holder of a cancelled concession a proper compensation, even though according to general principles, the concessior would not be binding upon the receiving state. In this event, the amount of the compensation will be determined, not by the payments called for in the concession nor by the value of the concession itself, but by the actual value of the benefit received by the *locus* ceded.

The "Cable cases" which arose at the end of the Spanish War present another illustration of the same principle. Prior to 1898 the Spanish Government had granted concessions and subsidies to certain English cable companies. After Spain had relinquished her sovereignty over Cuba and the Philippines, the British Ambassador presented a claim on behalf of the cable companies against the United States Government for annual subsidies which had been promised them by the Government of Spain. The contention of the British Ambassador in pressing this claim was that the burden of all concessions whatsoever which relate to the ceded territory passes to the receiving state. The question therefore whether the receiving state is bound by *all* concessions which relate to the ceded territory, or only by those which were granted for the benefit of the ceded territory, was squarely presented. The United States, in its reply to the British Ambassador adhered to the latter view. As in the Manila Railway case, Attorney General Griggs, upon whose opinion the United States State Department based its reply, held that the concessions would not be binding upon the United States unless the cables were for the sole benefit of the islands ceded. He further held that, as a matter of fact,

the benefit of the cables in question did not inure solely to the territory ceded, but that the concessions were made by Spain for imperial and military purposes, as well as for local benefit; and hence that the United States was not in strict law bound upon the concessions. Because, however, a large part of the benefit of the Philippine cables actually adhered to the islands themselves, he held that the islands were under an "equitable" obligation to pay the same annual subsidies to the cable companies with which their treasuries had been charged by the Spanish Government (23 Op. 197).

In an opinion delivered on June 14, 1901, Attorney General P. C. Knox, who succeeded Mr. Griggs, affirmed Mr. Griggs' decisions in both the Manila Railway case and the Cable cases (23 Op. 451). "I am not aware," says the Attorney General, "of any principle of international law, concerning the transfer of obligations entered into as considerations for 'works of local improvement' which precludes an inquiry into the question whether a given work situated in a locality—as all physical things must be—is a 'work of local improvement'" (21).

NOTE (21) The subsequent history of the Cables Company case was not satisfactory from the judicial viewpoint. The matter came up for consideration by the Attorney-General of the Philippine Islands; in opinions rendered on January 14, 1902, and January 17, 1902, Mr. Wilfley, the Attorney-General, held that the United States succeeded to Spain's obligation to pay the Cables Company an annual subsidy of 4,500 pounds, and similarly succeeded to the corresponding benefits of priority in transmission of messages, half-rate privileges of transmission, and the right to a certain share in the profits (see 1 Opin. Att. Genl. of Philippine Islands, 62 and 80). The Cables Company sub-

The principle that concessions bind the receiving state when granted for the sole benefit of the *locus* ceded, but not otherwise, seems therefore to be supported by precedents drawn from the actual practice of the United States. These precedents seem to establish that if the concession was granted substantially for the benefit of the territory ceded, the receiving state is legally bound. If it was granted substantially for the benefit of the ceding state, the receiving state clearly is not bound. If the benefit adheres partly to one and partly to the other, the receiving state is not bound legally upon the contract or concession; but although it is not bound upon the contract, it may be liable upon the theory of unjust enrichment, or, as the Continental lawyers would say, of "unmerited acquisition of benefits," for the benefit actually received.

These principles were again borne out by the actual decisions in the two much quoted cases of O'Reilly de Camara vs. Brooke, 209 U. S., 45

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sequently brought a claim against the United States Government in the United States Court of Claims which came up for decision in 1911. The United States moved to dismiss the petition on the ground that the plaintiff's claim arose out of treaty stipulations with a foreign nation and hence were not cognizable by the Court of Claims. The motion to dismiss was overruled, on the ground that the plaintiff's claims rested upon the theory of unjust enrichment or upon general international law (Australasia and China Tel. Co. vs. U. S., 46 Ct. of Claims, 646). The case was argued upon the defendant's demurrer in the following year (*Ibid.*, 48 Ct. of Claims, 33). The Court gave judgment for the defendant but upon the ground that the Court had no jurisdiction to try questions arising purely in international law. In view of the *Paquete Habana* decision (175 U. S., 677), some may find it difficult to agree with the holding of the Court; but in any event, the decision did not purport to settle the question of international law involved.

1907), and Sanchez vs. United States, 216 U. S., 167 (1910), although the language and reasoning of the Court in each of these cases followed the "property test" rather than the "benefit test."

* * *

Should any distinction be made between cases of cession and those of conquest? Although some writers have distinguished between the legal effects flowing from cession and those flowing from conquest, it would seem on principle that the two cases should be treated alike. The legal effects flow from the *fact* of the change of sovereignty—not from the form of the transaction by which title is passed. After all, cession is usually little more than a mere form,—the putting of the stamp of legal orderliness upon what in substance has been wrought through conquest or superior force; and it seems doubtful whether in principle the rights of private concessionaires should depend upon the formality of passing title through cession. If concessionaires secured greater rights in cession than in conquest, few states would care to increase their obligations by accepting a formal cession of territory acquired through military occupation. As a matter of actual practice, few courts seem to distinguish between change of sovereignty through conquest and change through cession.

As to whether any distinction should be made between cases where the ceding state remains in existence after the cession (i. e., "partial succession") and where it does not (i. e., "universal succession") there is some difference of opinion. Although in some parts of the law of succession this distinction may be of real significance, it would seem that in regard to concessions granted to pri-

vate individuals no distinction should be made. The fact that the ceding state becomes extinct and therefore the concessionaire may be without recourse against anyone must be treated rather as the latter's ill fortune than as a reason for saddling the receiving state with an obligation to which it is not justly entitled. The aim of the law is not to provide all comers who have lost property with remedies, but to enforce obligations against those who in justice owe them. The English practice, as announced in the Report of the Transvaal Concessions Commission, supports the view that no such distinction should be made. * * *

VI. General Principles of English Practice.

While the United States was solving questions of succession which arose upon the freeing of Cuba and the annexation of Porto Rico and the Philippines in 1898, another great Power was working out similar problems in South Africa. Since the study of the administration of international law within the courts of a single nation is attended with the danger of developing an isolated, or a too narrowly municipal understanding of international law, it may prove serviceable, before concluding this paper, to suggest in broadest outlines the principles of the English practice.

"At the outset two general principles of English law must be noticed. Although in the United States international law is recognized as part of the law of the land, it is open to some doubt whether it can be so considered in England. Indeed, some English courts have gone so far as to state expressly that international law cannot be

"deemed to be part of the law of the land." An English court which adopts such a view would not very readily enforce the rights of concessionaires arising under international law. In the second place, the English law of succession is complicated by the peculiar English doctrine that municipal courts cannot take cognizance of questions arising out of what are known as "acts of state." An "act of state" has been defined as "a public act, or act done by or under the authority of the Crown, outside the British territory, and affecting aliens. Such acts are not cognizable by the Courts; and in regard to them the plea of 'act of state' will, if proved, serve to debar the Courts from exercising jurisdiction." A long series of cases have decided that matters connected with the annexation of territory are entirely matters of state, and not justifiably by municipal courts. * * *"

After the Report of the Transvaal Commission with its conclusions is discussed at some length, Mr. Sayre proceeds:

"The strong similarity between the English law as outlined in this report and the American law will at once be evident. The striking difference is that England holds that municipal courts are not the proper enforcing agencies for securing rights arising out of annexation, while in America such rights may be enforced in municipal courts. Even English writers themselves seem inclined to explain away the statement that "a state which has annexed another is not legally bound by any contracts made by the state which has ceased to exist." Westlake says:

> The latter dictum (i. e., the sentence just quoted) is true, since courts of law are bound

by the will of the sovereign power of the country, whether that will be just or unjust. The former dictum, denying all continuing legal obligation of contracts in cases of state succession, is to be explained by the narrow meaning which the commissioners evidently attached to the term "legal," partly from attachment to Austin's narrow definition of law, and partly from connecting the term exclusively with the ordinary courts of law, which in England are not the only channels of redress where the Crown is concerned. The legality of a claim, in any but a misleading sense, does not depend on the particular method that ought to be taken in order to enforce it. In any case the dictum was superfluous for the commissioners' object.

Another difference lies in the fact that the Transvaal Report says nothing about the requirement that concessions and contracts, to bind the receiving state, must have been granted for the general benefit of the *locus* ceded,—a limitation which, as has been noted, was adopted by the United States in cases following the Spanish-American War. On the other hand, the general principles suggested in the report, and the exceptions made to the general rule, evidence a strong similarity to the law as laid down in the United States. * * *

VII. Conclusion.

The suggestion that concessions, to be binding, must have been granted with a view to the general improvement or benefit of the *locus* ceded, is the

peculiar contribution of America. Although there have not been as yet enough rulings upon this particular matter to justify calling it a settled American doctrine, it has been sufficiently enunciated to demand the consideration of all interested in this branch of the law. Yet the "benefit test," equitable and sound as it seems, is not entirely without disadvantages and difficulties. Where the receiving state is not bound by the concessions, the rule may lead to the practical result of depriving concessionaries of any recourse, since the ceding state may be extinct, or unwilling to accord them any compensation. It is also subject to the objection that it opens up to the courts of the receiving state a possible way of avoiding liability upon concessions, by the simple assertion that the concession was not in fact granted for the benefit of the *locus* ceded. Even to a court sincerely anxious to do justice, it presents a test which may be attended with considerable difficulty of application. For all these reasons one cannot prophesy what may be its future.

On the other hand, the rule has many manifest advantages. Abstractly, it seems clear justice that a state, acquiring territory by conquest or cession, should not be saddled with debts and obligations which it never itself undertook and which were never created for the benefit of the territory acquired by it. In fact, a rule of absolute liability regardless of benefit would seem actually unjust. Although the test of benefit may be difficult to apply, the difficulty of applying the "property test" is incomparably greater. Furthermore, after a few decisions have settled the general principles by which "benefit" is to be determined, many of the difficulties of application will disappear. "Ben-

efit" should be interpreted in a broad way. It need not necessarily signify the direct and immediate financial benefit of ceded territory; it is enough if the concession was granted to further the general progress and development of the country. The building of a railway, the opening of a country's resources, the furthering of a district's industry and economic development, may all be for the general benefit of a country. But a concession for exploitation, granted, at the expense of the local district, for the gain of the granting government as the chief end in view, would clearly not be for the benefit of the *locus* ceded; and it would seem unjust that the receiving state should be saddled with such an obligation. The danger of attempting to enforce as international law a sweeping generalization, making *all* concessions binding upon the receiving state, is that the injustice of cases such as that suggested will tend to cause a reaction in favor of the view, which has been already advanced by some writers, that *no* concessions are legally binding upon the receiving state.

"Whether or not the "Benefit Rule" will be permanently incorporated into international law only the future can tell. The law will doubtless be freshly moulded by the judicial and administrative decisions in the years following the termination of the present world conflict, when the whole question of succession will assume a new and large importance. May it not be that by the adoption of the "benefit test" as suggested by the practice of the United States, international law may reach a closer approximation to the eternal principles of justice, or "jural postulates," which must be at the foundation of all law which endures?"

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In the Supreme Court of the United States.

OCTOBER TERM, 1919.

THE EASTERN EXTENSION, AUSTRALASIA and CHINA TELEGRAPH COMPANY, LIMITED, Appellant,

v.

THE UNITED STATES.

No. 357.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This case arises out of three concessions granted by the Kingdom of Spain to the appellant prior to the cession of the Philippine Islands to the United States.

The First Concession.

The first concession was granted February 22, 1879, and provided for the laying of a submarine cable by appellant between the western coast of the Island of Luzon and Hongkong. (Finding II, Rec. 88.) Among other provisions of the grant are the following articles (Rec. 17, 18):

> Article 11. The Government will pay to the concessionary of the Luzon-Hongkong Cable

a monthly subsidy of $4,000 for a period of 10 years, reckoned from the date of transmission over the submarine cable of the first dispatch, so long as the cables are in good working order, for which effect the concessionary will be required to produce a certificate from the inspector to be named by the Government. The above-mentioned subsidy shall be paid monthly by the Manila treasury, one-third by the treasury and the remaining two-thirds by the local funds, as provided in similar cases. If, during the working of the cable, it should cease to transmit messages, the Government will not pay the subsidy so long as the interruption lasts; but if it be repaired within the space of one year, the period of interruption shall not be taken into account in the calculation of the subsidy in question.

Article 12. The concessionary shall enjoy an exclusive privilege for 40 years, during which period it shall not be lawful for the Government to grant the right of laying any other cable between the points mentioned in this concession. The Government reserves to itself the right of suspending the transmission of messages over the cable, if they should appear dangerous to the security of the State, in conformity with the stipulation of the last International Telegraph Convention, the regulations of which shall apply to this telegraph route so long as they do not clash with the clauses of this concession.

Article 16. The official correspondence of the Government shall enjoy the privilege of priority and free transmission over the cable, in conformity with the telegraphic service regula-

> tions now in force in the Philippine Islands, during the term of subsidy; at the expiration of which it shall enjoy priority and be paid for at one-half the established tariff rates.

Article 16 was subsequently modified so as to provide for free transmission of official messages during the entire forty years of the concession. (Rec. 19.) It also appears that before England consented to the laying of the proposed cable at Hongkong it required from Spain two concessions, namely, "the usual one of priority of transmission of official telegrams, and the faculty on the part of England of taking possession in case of emergency of the station established in British territory on payment of a reasonable compensation." (Rec. 29.) The cable provided for by this concession was completed May 8, 1880. (Finding V, Rec. 89.)

The Second Concession.

The second concession to appellant, granted April 14, 1897, was for the purpose of providing submarine telegraph communication between what are known as the Visayas Islands, Panay, Negros, and Zebu, and the island of Luzon. (Finding III, Rec. 88.) This concession is entirely distinct from the first and is sometimes referred to in the record as the "Visayas Concession," the said islands of Panay, Negros, and Zebu being the principal Visayas Islands. The grant among other provisions contained the following (Rec. 52, 56, articles 9, 10, 16, 17, 18):

> Article 9. The concessionnaire undertakes to work, at his own expense and risk, the cables

of this concession for a period of twenty years, the said term to begin from the date of the taking over of the cables and their adjuncts in perfect working order.

Article 10. The concessionnaire shall enjoy an annual subsidy of £4,500 (four thousand five hundred pounds sterling), payable monthly in twelve installments, during the whole term of the working of the cables, the said payments being made at Manila by the "Caja de la Tesoreria Central" (chief treasury office) of those islands.

Article 16. The company holding the concession shall pay the State the ten per cent, which tax in its application to cablegrams is fixed after first deducting the amount of the expenses for the maintenance of the stations, calculated at £6,000 (six thousand pounds sterling) per annum, the said expenses not to exceed the amount specified.

Article 17. It shall be obligatory to transmit official despatches, which shall enjoy precedence, at half the rates charged for those of a private character. Official despatches, like private ones, shall be handed to the employees of the State for them to forward or deliver to the addressee.

Article 18. The tax applicable to telegrams transiting over the said cables shall be uniform—fifty centimes of a franc per word—no transit nor terminal rate being charged for the telegraphic transmission over the land lines belonging to the Government in the Islands of Panay, Negros, and Zebu. There is a surtax of five centimes of a franc per word

on telegrams transiting between the above-mentioned islands and the others of the Archipelago.

The cables provided for under this concession were completed in October, 1897. (Finding V, Rec. 89.)

The Third Concession.

The third concession was granted on March 30, 1898. It is in fact an extension of the first concession for a submarine cable from Hongkong to Manila, and has no connection with the second (Finding IV, Rec. 89). Under the first concession the cable laid was from Hongkong to Cape Bolinao on the western coast of the Island of Luzon and connected with Manila by a land line from that place. This third concession provided for cutting the aforesaid cable near Bolinao and extending it to Manila (Rec. 73, art. 1). Appellant submitted two proposals for this concession. The first provided for a subsidy for 20 years; the second, for an extension of the monopoly of the present cable (which was for 40 years from 1880, as provided in the first concession), and it agreed to make the extension for the grant of this monopoly without any subsidy (Proposal 2, Rec. 69, and Par. Fifthly, Rec. 71). The concession contained the following provisions found in articles 3 and 4 (Rec. 73):

> Firstly. The concession of an extension for 20 years (which will expire the 8th May, 1940) of the monopoly enjoyed by the aforesaid company for the working of the Hongkong-

Manila cable, until which date no other submarine telegraph line can be laid between the points mentioned.

Secondly. The extension of the landing rights for a period of 20 years in respect of the cables, the concession for which is granted for the purpose of joining all the Spanish possessions in the Pacific Ocean, and of connecting them with other countries—such period to be reckoned from the date on which the new cable is opened for working.

Article 4.

The Government may at any time, whenever it deems it expedient, and in the period of the 20 years referred to in the second paragraph of the preceding Article, redeem the privilege of establishing cables in our Islands in the Pacific by the annual payment to the company of £5,000 (five thousand pounds) sterling for the years which may then remain unexpired as regards the period abovementioned; but the company shall continue to enjoy the privilege granted in the first paragraph, without the right of receiving any subsidy.

Also the following conditions appear in the schedule annexed to the concessions, (Rec. 79):

10. In all cases the Government official correspondence shall enjoy the privilege of priority of transmission by the cable; and agreeably to the service regulations at present in force in the Philippine Islands, it shall be free

of charge during the first ten years of the present concession; for the ten years following it shall be paid at the rate of one-fourth the ordinary tariff, and at half the same during the aforesaid second period and until the expiration of the concession.

11. The concessionaire shall fix the tariff for the private correspondence transiting over the cable, the maximum rates for which shall not exceed those adopted by telegraph companies whose cables are similarly circumstanced.

The extension provided for by this concession was completed April, 1898.

The Original Petition.

The original petition filed in the Court of Claims, October 22, 1910, praying judgment for the amount claimed to be due appellant on account of the subsidy of £4,500 per year provided for by the second concession, was dismissed by the Court of Claims for want of jurisdiction under Section 1066 R. S. (48 Ct. Cls., 33). Upon appeal to the Supreme Court (231 U. S. 326), the Court of Claims was upheld in its conclusion that in so far as appellant's claim was based upon the treaty between the United States and Spain that court was without jurisdiction, but the case was reversed and sent back to the Court of Claims for trial because some allegations of the petition indicated the possibility of a claim existing that could arise from an implied contract, it being

suggested by the Supreme Court that an amended petition might be filed and its sufficiency in law and fact could be heard and determined, the court stating (p. 334): "If the petition can be fairly said to present the claim that the United States, not simply by virtue of succession to sovereignty under the treaty of cession, but through its subsequent transactions with the appellant, and by contract to be implied from such transactions, has become indebted to the appellant, we think that the claim, as thus limited, would be within the jurisdiction of the court below under the Act of 1887."

The Amended Petition.

Appellant accordingly filed its amended petition in the Court of Claims (Rec. 2–8) setting forth in paragraph XVIII six benefits which it claims the United States has derived and enjoyed, and claiming the amount due under the second concession in almost identical terms with the original petition. (See paragraphs XX and XXI of the amended petition.) Testimony was taken in the case, it was duly submitted to the court, and on April 7, 1919, the Court of Claims made its findings of fact from which it concluded that appellant was not entitled to recover and dismissed its petition, the court holding that the appellant had failed to prove any implied contract on the part of the United States to pay the subsidy provided for by the second concession.

ARGUMENT.

I.

The Former Decision of this Court Establishes the Lack of Jurisdiction of the Court of Claims to Adjudicate Any Claim Against the United States Based Upon a Treaty or International Law.

An examination of the original petition, the opinion of the Supreme Court upon the former hearing (231 U. S. 326) and the amended petition, shows that appellant seeks to impose liability on the United States in three different ways: First, under the treaty of Paris. That the Court of Claims has no jurisdiction to consider this liability is plain from the former opinion. The second proposition upon which appellant relies is that the obligation of the United States can be treated as one not dependent upon the treaty, but enforceable under the principles of international law, it having succeeded Spain in the sovereignty over and ownership of the Philippine Islands, and succeeded to all of the rights acquired by Spain under its concessions to appellant. This contention is as definitely disposed of as the first. It is stated in the former opinion of this court as to this (p. 333):

> It is insisted, however, that the claim should not be treated as one dependent upon a treaty stipulation (*United States* v. *Weld*, 127 U. S. 51, 57), that the treaty merely serves to confer upon the United States the title to the Philippine Islands (December 10, 1898, 30 Stat. 1754; November 7, 1900, 31 Stat. 1942); and that the claim is based upon considerations of in-

ternational law. It is pointed out that it was stated in the protocol that an article proposed for the assumption of contracts which had been entered into by the Spanish Government was rejected by the American Commissioners, while it was also set forth that it might be assumed that the United States would deal justly and equitably in respect of contracts that were binding under the principles of international law (Sen. Doc. No. 62, 55th Cong., 3d Sess., pp. 240, 241). But, if the claim of the appellant were deemed to rest exclusively upon the transfer of sovereignty, upon the theory that thereby under the principles of international law an obligation in its favor was imposed upon the United States, the claim would still, in our judgment, be excluded by the statute from the consideration of the court below. The words "treaty stipulation" should not be so narrowly interpreted as to permit the exercise of jurisdiction where the claim arises solely out of the treaty cession. Whether the liability asserted is said to result from an express provision of assumption contained in the treaty, or is sought to be enforced as a necessary consequence of the cession made by a treaty, it is equally within the policy and spirit of the statute; and the letter of the statute should not be otherwise construed. It is its evident purpose that the obligations of the United States directly resulting from a treaty should not be determined by the Court of Claims.

It is impossible to work out any theory of liability of the United States on account of its succession to

the sovereignty of the Philippines which does not call for the exercise of jurisdiction by the Court of Claims which has been denied it by statute.

Dismissing from the present argument, therefore, all claims "growing out of or dependent on any treaty stipulation," and we submit that they must be dismissed on account of the statute and the interpretation thereof by this court, the only question remaining is whether the appellant has made out a case against the United States fixing its liability by contract, express or implied.

II.

Appellant has Failed to Establish Any Implied Contract on the Part of the United States.

The case is before the court on findings of fact which cover all of the allegations of the petition and these findings are conclusive. The claim of appellant, separated from its claim of liability assumed by the United States from its succession of sovereignty to the Philippines, is that since the signing of the Treaty of Paris the United States has assumed absolute jurisdiction over all the Philippine Islands and has assumed jurisdiction and control over all property and property rights there, including the several lines of cable constructed by the appellant; that it has availed itself and has continued to avail itself of all the benefits and advantages of such cable, using the lines for its governmental and other purposes, and that it "has ever since continued to be the successor of the Kingdom of Spain with respect to all of the rights,

privileges, and advantages conferred upon and secured and reserved to said Kingdom under the terms of each and every of the grants and concessions" * * *. (Amendment petition Par. XVII, Rec. 5.) Then follows specification of benefits and advantages claimed to have been derived and enjoyed by the United States. Paragraph XIX alleges a settlement with the United States in August, 1905, asserts that at that time a balance in its hands owing to the United States was "*at the request of the United States of America* * * * duly paid to it by the claimant, and *accepted and received by the United States of America* in satisfaction thereof." (R. 7.)

Paragraph XX (R. 7) is as follows:

> By reason of the premises the United States of America assumed and adopted all of the obligations and the performance of all of the conditions accepted by the Kingdom of Spain and agreed to by it according to the terms of the aforesaid concessions Schedules A and B, and of each of them, and agreed with the claimant to perform the several covenants and agreements and to fulfill the conditions set forth in the several concessions aforesaid and accepted and agreed to by the Kingdom of Spain, and the United States of America, by the acceptance and enjoyment of the aforesaid benefits and advantages derived from the use of the cables constructed by the claimant as aforesaid, agreed to pay the aforesaid annual subsidy of £4,500 sterling as required by the terms of Article 10 of the aforesaid concession hereinbefore referred to as Schedule B.

It will be seen from this that appellant's claim is for the subsidy which Spain contracted to pay it under the second concession, for the amount specified by its contract with Spain, upon the theory that the United States is bound by all the terms of its contract with Spain to the same extent and in the same manner as Spain.

Aside from the several allegations which we shall next refer to, the record fails to show any exercise or control over any property or rights of the appellant, except that the United States used the cables of the appellant for transmitting its messages. So far as the record shows the lines of cable are still intact, under the control of, and being operated by the appellant; it has been deprived of none of its tangible property. The petition is not based upon the theory of just compensation for property taken, but is for a fixed amount provided in a contract to which the United States was not a party. Nor is there any claim for compensation on account of the use by the United States of the facilities afforded by appellant; the United States has paid the fixed rates of appellant for such use.

The only acts of the United States set forth by appellant upon which to base its theory of implied contract, except the settlement alleged in paragraph XIX, are found in paragraph XVIII of the petition (Rec. 6), separated into six paragraphs lettered, respectively, from (*a*) to (*e*), inclusive. The first is that appellant from December, 1898, until December, 1908, transmitted official messages of the United

States over its cable from Manila to Hongkong free of charge, and since that time at one-fourth of the regular rates, and that it has continuously afforded the right of priority to the transmission of official messages. The Court of Claims finds as to this that the United States Government has paid full established rates on the Hongkong and Manila cable at all times. (Finding IX, Rec. 91, 92.) It is unnecessary to elaborate upon the finding of facts as to this. The United States not only paid full rates on its messages, but specifically declined the offer of the company to transmit the same free. The company, though actually receiving payment for all Government messages over these cables, seeks to maintain that it transmitted the same free under the terms of the concession by keeping an account of the money thus received by it and crediting the same against the amount which it claimed to be due it under another concession. There was no subsidy due under either the first or third concessions, which related solely to the Hongkong-Manila cable. The claim for the subsidy was under the second or the Visayas concession, which has no connection with the other two.

The allegation in regard to the granting of priority to United States messages, as shown by Finding VIII (Rec. 91), is in conformity with the usual practice as to the operation of cables. The same privilege was granted to England (R. 29–31). There is no allegation whatever that this was done at the request of the United States or at its demand, though it is sub-

mitted that the United States or any other Government might compel priority in the transmission of its messages without incurring any obligation upon its part other than to pay proper compensation therefor. Paragraph (*b*) alleges that the appellant has transmitted official messages of the United States over the Visayas cables at half rates charged for private dispatches and has at all times afforded these messages preference. The finding of the Court of Claims is that this was the established rate of this company for sending such messages. (Finding VIII, Rec. 91.) The Government in sending its messages paid the rate which was charged. The priority for Government messages was granted over the Visayas cables the same as it was over the Hong Kong-Manila cables and was the same priority that is granted to Government messages everywhere.

The next allegation, paragraph (*c*), is that since 1898 appellant has paid to the United States the tax of 10 per cent upon its local receipts for cablegrams over the Visayas cables, when there was such tax to pay, under Article 16 of the second concession, and paragraph (*d*) alleges like payment to the United States since December 10, 1898, of the surtax of five centimes of a franc per word on all telegrams between the Visayas Islands and other islands of the Philippine Archipelago. These two allegations must necessarily be considered with that made by paragraph (*a*) that the Government messages have been transmitted free over the Hongkong-Manila cable. These allegations are covered by findings IX and X of the Court of

Claims (Rec. 91, 92), which in substance show that the company first, about March, 1899, offered to transmit free messages for the United States between Hongkong and Manila; that the United States at first considered accepting this proposition if it could do so without such acceptance having any bearing upon its liability under the concessions, but that it finally flatly declined to accept this offer, and up to that time and thereafter, until the year 1905, nothing whatever was paid by the appellant to the United States or to anyone representing it.

It appears further that annually, from 1901 to 1905, appellant rendered statements to the secretary of finance and justice at Manila showing the amounts claimed to be due to and from it on account of the said concessions. No action whatever was taken on these accounts and nothing whatever was paid either to the United States or to anyone in authority in the Philippine Islands. Finally, in 1905, appellant rendered another account in which it stated that it had in its hands a balance of £4,712 10s. 6d. "in favor of the United States Government in the Philippines, as to the disposal of which I shall be glad to receive your instructions." (Rec. 94.) This communication and statement were sent to the secretary of finance and justice of the Philippine Islands. In response thereto the auditor of "the Government of the Philippine Islands" wrote the company, acknowledging receipt of the communication as to the sum "due the insular government under your concession" and stating "it is

respectfully requested that said amount be deposited with the insular treasurer as miscellaneous revenue." (R. 95.) Thereafter accounts were made out and forwarded by the company to the insular government each year, but no further sums were paid into the insular treasury and nothing whatever was paid to the United States; and nothing was paid by the United States or the insular government in response to the demand of the company.

The payment of this amount into the insular treasury in 1905 can not establish the acceptance by the United States of all or any of the obligations which would have been owing by Spain had it continued the sovereignty of the islands. The implication would have to be that the United States, acting through authorized representatives knowing the terms of the contract between Spain and appellant, accepted from appellant the amount paid up to 1905 for the transmission of messages and thereby elected to be bound to appellant by all the terms of the concession in the same manner that Spain was bound. The facts proven can not possibly give rise to such implication. First, the payment was not made at the request of the United States nor even at the request of the insular officials. The company had been trying for five years to get some representative of the Philippine government to accept this money, unsuccessfully until 1905, when it was paid. There is nothing to show that either the auditor or treasurer of the insular government had knowledge of all

the terms of the concession, nor that by accepting the payment they intended to do anything except to add money, which was voluntarily tendered, to the revenue of the islands. These officers were mere subordinate officers of the insular government and were in no sense officials of or having authority to bind the United States. In fact, it is doubtful if any act of either of them could bind the insular government, unless expressly authorized. (*Wisconsin Central Railroad* v. *United States*, 164 U. S. 205; *United States* v. *Harmon*, 147 U. S. 275; *Chorpenning* v. *United States*, 94 U. S. 399.)

In addition there is no showing whatever that this payment into the treasury of the Philippine Islands was ever brought to the knowledge of the United States. The Court of Claims finds as to this (Rec. 97): "It does not appear that any part of said sum was paid into the Treasury of the United States nor has the claimant paid any sums to the United States Government." There is no privity shown between the United States and the insular government as to this transaction; the officers receiving the payment were not officers of the United States and no payment was requested by or received by the United States; nor did said officers of the insular government have any authority to receive money for or on account of the United States. The action of the officers of the insular government in accepting this payment was directly contrary to the determination of the United States in regard to the stipulations of these concessions, namely, that it declined to agree to free

transmission of its messages over the cables of appellant and decided to and would pay the full established rates, which determination had been, prior to the payment now relied upon by appellant, communicated to appellant by the Secretary of War (Finding IX, Rec. 91, 92), and at the time of the payment was known as the attitude of the United States Government by appellant, whether it was known by the auditor of the Philippine Islands or not. Therefore, even if the auditor or treasurer of the insular government had any authority to bind the United States in any way, which it is submitted they had not, still they could not possibly bind the Government by acting in direct contradiction of the decision of the Government communicated to and known by appellant.

In addition appellant relies upon an implied contract, or, as stated in one part of its brief, a quasi contract. Such a contract is a new contract, not a novation. What appellant contends for would practically amount to a novation—Spain would be released and the United States substituted without its consent. A contract whether express or implied requires competent authority for each of the contracting parties. It is not only one contract that appellant seeks to establish, but, in fact, two, as the third concession may be regarded as a continuation of the first. The second concession, as heretofore indicated, is entirely distinct from the first and third. It is sought further to establish these contracts in all their terms, as made by appel-

lant with the Kingdom of Spain. That is that the treasurer of the Philippine Islands, by accepting the payment voluntarily tendered by appellant, entered into a contract on behalf of the United States by which the United States bound itself to do all of the things which Spain had promised to do, including the grant of an exclusive monopoly of the Hongkong-Manila cable until 1940. If authority to make such a contract on behalf of the United States exists, that authority surely has not been vested in any official of the Philippine Islands. As a matter of fact it does not exist, and without authorization by Congress no such contract could be made that would be binding upon the United States. (*Hooe* v. *United States*, 218 U. S. 322; *United States* v. *Buffalo Pitts Company*, 234 U. S. 228; *United States* v. *Doullut*, 213 Fed. 729).

We are not claiming that appellant is not entitled to full and just compensation for all use of its property by the United States. This it has had, and no claim therefor is made by the petition. The Court of Claims has expressly found that the United States at all times has paid the full rates charged by the appellant for messages over any of its said cables (Rec. 97). The claim it is making in this case is not for compensation for use of property nor compensation for property taken, but is for a fixed sum that was due it under a contract with the Kingdom of Spain, and it seeks to fasten this obligation upon the United States by a voluntary payment made to underofficials of the Philippine

Islands, only accepted by them after repeated entreaties on behalf of appellant and made by it after it knew that the United States had positively declined to accept the services which the said payment represented.

As to the allegation of paragraph (*d*) of the petition that the appellant has paid to the United States of America the surtax of 5 centimes of a franc per word, at all times since December 10, 1898, under article 18 of the second concession, it is sufficient that the Court of Claims has found (Finding X, Rec. 98) that this surtax was paid to the local authorities by monthly payments in local currency, and there is no finding or evidence whatever that any part of this tax was ever paid to the United States. The finding shows, furthermore, that this tax was a surtax in addition to the established rate, was collected by the appellant from the senders of cablegrams and paid by it to local authorities, that it was in no sense a payment out of the treasury of appellant, and no part of it was ever paid to the United States or any representative of it.

Paragraph (*e*) is simply a recital that the United States made use of the cables of appellant, particularly during the Filipino insurrection. This is granted, and it is of course true, that this use of the cables was of great benefit to the United States, but the Court of Claims has found that the United States paid the full rates charged by the appellant for this use, and there is no more reason to say that by this use, for which it paid, the United States

assumed all the obligations of the Spanish concession than there is to say that any other user assumed such obligations.

Paragraph (*f*), while it does not expressly state that the extension of the Visayas cables after the occupation of the Philippines by the United States was at the request of the United States, would perhaps give rise to that inference. The original cable extended from Manila to the station of Kapiz on the island of Panay, thence by land lines across that island to Iloilo; from Iloilo the submarine cable was laid to the nearest station on the island of Negros, and from there was extended across the island of Negros by a land line to the station of Esgalante where the submarine cable was again laid to the nearest point in the island of Cebu from where it was extended by a land line to the town of Cebu. The facts as to this extension appear in Finding VII (Rec. 90–91). This extension was made at the suggestion of appellant in order to obtain better service by dispensing with the land lines, it was made at its own expense and not at the request of the United States. The only connection the United States had with the matter was to give its approval to the extension with the understanding that it was to be without prejudice to and with the reservation of all rights of the Government of the United States. The United States was not even asked to bear any part of the expense of laying these cables, nor to make any arrangement with appellant as to the same, and the fact

that they were laid has no bearing whatever upon this controversy.

Even if there existed authority for any officer or department of the United States to make a contract, either express or implied, such as was made between appellant and the Kingdom of Spain and which it is sought to have the United States assume, still the appellant has failed to prove any of the allegations of its petition upon which it relies to establish such an implied contract.

III.

No Enforceable Obligation Exists Against the United States on Account of These Concessions.

In addition to the findings of fact made by the Court of Claims in this case which preclude any recovery by appellant, there are in existence public records which show that from the beginning the United States has refused to be bound by concessions made by the Kingdom of Spain to private individuals. At the time of the making of the treaty of Paris, it was proposed by the Spanish commissioners that the Government of the United States should assume the so-called colonial debts of the Kingdom of Spain in Cuba, Porto Rico, and the Philippines. Among the obligations in the Philippines which it was particularly desired that the United States should assume was the obligation resting upon Spain on account of the construction of a certain railway in the island of Luzon, and also the cable contracts with the appellant. The United States

refused to assume any liability, especially in the Philippines, and the payment of $20,000,000 to Spain was probably to enable Spain to take care of the obligations legitimately resting upon her. For full report as to the proceedings of the commissioners upon these matters see Senate Document No. 62, part 1, Fifty-fifth Congress, third session, pages 216–218, 240, 241, and Magoon's Reports, pages 177–193.

On December 21, 1899, Charles E. Magoon, law officer, bureau of insular affairs, submitted to the Secretary of War an exhaustive report on the claim of the Manila Railway Co. (Ltd.) for payment by the United States of certain interest under a guaranty by the Spanish Government. (Magoon's Reports, pp. 177–193.) The claim was in all respects the same as that now made by appellant, except the feature of implied contract now relied upon. The report held (1) that by the terms of the treaty of peace the United States did not assume obligations of this character resting upon Spain, (2) that obligations of this character did not pass to the United States by operation of international law upon cession of sovereignty over the Philippine Archipelago.

In 1900 the Secretary of War requested the opinion of the Attorney General as to what obligations, if any, existed under the concession granted by the Kingdom of Spain to the Manila Railway Co. (Ltd.) against the revenues of the Philippine Islands or those of the United States. This concession was the same one reported upon by Mr. Magoon. Attorney General Griggs, in a carefully prepared opinion

(23 Atty. Gen. Op. 181–195), held that the obligation to pay the subsidy did not pass from Spain to the United States, but he thought that if the Philippine Islands continued to receive the benefits from the maintenance of the utility, equitable consideration justified a new arrangement by the insular government as to the subsidy, based upon existing and prospective conditions, and not upon obligations incurred by Spain; that there was no enforceable obligation as against the United States, and whether there was any liability at all upon the United States was a question for Congress.

The Attorney General also rendered an opinion (23 Atty. Gen. Op. 195–200) to the Secretary of State with reference to the concession of the appellant, particularly as to the subsidy of £4,500 claimed to be payable from the general treasury of the Philippines, and following the reasoning upon which is based his opinion to the Secretary of War in regard to the concessions as to railways, he held that there was an equitable obligation on the part of the islands of Luzon, Panay, Negros, and Cebu on account of the establishment of the Visayas cables provided for by the second concession, and that there was also an equitable obligation on the part of the islands on account of the concession for the Manila-Hongkong cables established under the first and third concessions. He definitely held that the concessions were not binding as contracts on the United States, the Philippines, or other government replacing Spain. He further held that it was un-

necessary to inquire into any equitable obligation on the part of the United States, since any such obligation, if it existed, would be solely for Congress. This opinion was requested by the Secretary of State at the instance of the British ambassador. On June 14, 1901, the subject was again taken up by the Secretary of State, at the request of the British Government, which did not concur in the views expressed by Attorney General Griggs in the opinions to which we have referred, and a reconsideration was requested on behalf of the British Government. Attorney General Knox in reaffirming the opinions of Attorney General Griggs stated that he had examined the reasoning of his predecessor; that he did not find such reasoning incorrect and did not consider it necessary to give further reasons. He suggested, however, "that works known to have been contracted for by the imperial authorities, and used and controlled by them for imperial purposes, must be conclusively presumed to be works of imperial improvement." (23 Atty. Gen. Op. 451–454.)

On July 22, 1901, Mr. Magoon rendered a report to the Secretary of War upon appellant's claim, at the instance of the Chief Signal Officer, in which he reaffirmed his former holding. (Magoon's Reports 529–531.)

The claim of appellant was thus directly presented through representatives of its Government, it being a British corporation, to the proper representatives of the United States Government, and it was defi-

nitely held that there was no enforceable obligation upon the United States on account of these concessions. The first opinion was in 1899, the last in 1901, so that appellant knew at the time it voluntarily made payments into the treasury of the Philippine Islands that the United States had expressly disclaimed any binding obligation on account of these concessions, and that so far as any claim against the United States was concerned, its only recourse was to Congress.

The attitude of the United States in regard to its obligations under these concessions has been consistent from the negotiations preceding the signing of the Treaty of Paris down to the present time, and has been continuously known to appellant. This of itself is sufficient to dispose of any claim of an implied contract, even if any insular official had authority by word or deed to bind the United States.

CONCLUSION.

Appellant seeks to establish by implication that the United States is bound by two contracts entered into by the Kingdom of Spain with appellant, relying upon these contracts in their entirety. If liability on the part of the United States is established it must be in accordance with all the terms and conditions of said contracts. Not only has it failed in its proof, but there is no authority in existence by which any official or department of the United States can bind the United States, expressly or by implication, by such contracts.

Appellant contends for the exact amount of the subsidy contracted to be paid it by the Kingdom of Spain and this claim can only be asserted against the United States by reason of the cession of sovereignty of the Philippines by the Kingdom of Spain to the United States. This claim, no matter how it is viewed, is without the jurisdiction of the Court of Claims.

Respectfully submitted.

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EASTERN EXTENSION, AUSTRALASIA & CHINA TELEGRAPH COMPANY, LIMITED, *v.* UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

No. 357. Argued December 15, 1919.—Decided January 12, 1920.

The Court of Claims is without jurisdiction of a claim based on an obligation of the United States growing directly out of the treaty with Spain ceding the Philippine Islands or on one imposed by principles of international law as a consequence of the cession. Pp. 357, 362. *Eastern Extension Tel. Co.* v. *United States*, 231 U. S. 326; Jud. Code, § 153.

To create an express or, (in a strict sense,) an implied contract binding the United States, some officer with express or implied power to commit the Government must have intended that result. P. 363.

A cable company holding Spanish concessions in the Philippines obliging it to transmit government messages, in part free and in part at reduced rates, and to pay certain taxes, and entitling it to a subsidy, claimed the subsidy from the United States, upon the ground that the Government, by accepting the benefits, had assumed the burdens of the concessions. *Held*, that no such contract could be derived from the facts as found. *Id.*

Such a contract could not be implied from the use of the cable service in transmitting government messages, when the Government paid

the rates, in part reduced but all as fixed and charged by the company, and, through the Secretary of War, expressly declined free service. P. 363.

Nor did any liability of the United States arise from expenditures made by the company in voluntarily extending its lines with approval of the Government given without prejudice to the Government's rights. P. 364.

The acceptance by subordinate executive officials of the Insular Government of payments tendered by the cable company in connection with statements of account assuming a recognition of its concessions and right to subsidy, *held* no basis for implying an obligation of the United States to pay the subsidy. *Id.*

54 Ct. Clms. 108, affirmed.

THE case is stated in the opinion.

Mr. Louis Marshall for appellant.

Mr. Assistant Attorney General Davis, with whom *Mr. W. F. Norris* was on the brief, for the United States.

MR. JUSTICE CLARKE delivered the opinion of the court.

The appellant, claimant, is the grantee from the Government of Spain of three concessions to lay down and operate submarine cables. The first one, in 1879, was for the exclusive privilege, for forty years, of constructing and operating a cable between the Island of Luzon and Hongkong. It was landed at Bolinao, on the northerly coast of Luzon, and dispatches were transmitted to Manila and other places by government owned land lines, which were subject to interruption. This concession required that official messages be transmitted free and be given precedence. In 1898 a second concession, supplemental to the first, empowered the claimant to extend its cable to Manila and the term of the prior exclusive grant was extended twenty years, with the same priority for official dispatches, but with the provision that they were to be

transmitted free, only for the first ten years from the date of this second grant.

In 1897 a third concession, the one with which this case is chiefly concerned, authorized the claimant to lay down and operate three submarine cables, connecting the Island of Luzon with three Visayas Islands,—Panay, Negros and Cebu. This grant required the claimant: to operate the cables for twenty years; to give precedence to official dispatches and to charge for them at one-half the rates charged for private messages; to pay a tax of ten per cent. on receipts in excess of expenses not to exceed £6,000 per annum, an additional tax of "fifty centimes of a franc" per word on telegrams transmitted, and a surtax of "five centimes of a franc" per word on telegrams between the four islands named in the grant and others of the Archipelago.

The Government of Spain, on its part, agreed to pay the claimant, in equal monthly instalments, an annual subsidy of £4,500 during the term of the grant.

All of the cables were promptly laid down and put in use and those of the third grant are designated in the record as the "Visayas cables," and the grant as the "Visayas concession." This suit is to recover the amount of the subsidy provided for in the third concession, which had accrued when the petition was filed.

The United States denied all liability, and the judgment of the Court of Claims, dismissing the petition, is before us for review.

The case was here before on appeal and this court held (231 U. S. 326) that the case as then stated in the petition, was not within the jurisdiction of the Court of Claims, whether viewed as asserting an obligation growing directly out of the treaty with Spain or one imposed by principles of international law upon the United States as a consequence of the cession of the Islands by the Treaty. The court, however, referring to certain general and indefinite

allegations in the petition, suggested that the implication might be drawn from them that there may have been action on the part of officials of the Government of the United States since it had assumed sovereignty over the Islands, which, if properly pleaded and proved, would give rise to an implied contract with the claimant outside the Treaty, which would be within the jurisdiction of the Court of Claims, and, to the end that the right to have such a claim adjudicated might be saved, if it really existed, the case was remanded for further proceedings in conformity with the opinion.

Doubtless inspired by the suggestion from the court, an amended petition was filed, in which claimant alleged with much detail; that the Government of the United States had used the cables extensively for official messages, which had been given precedence and had been transmitted, as required by the terms of the two concesssions, over the Hongkong cable free until 1908 and thereafter at one-fourth of the regular rate, and over the Visayas cables at one-half the rate charged for private dispatches; that the claimant had paid and the Government accepted the ten per cent. tax on receipts from messages, computed as required by the third concession; that since the American occupation the service over the Visayas cables had been extended and improved at large expense by arrangements with duly authorized officers of the Government; and that in August, 1905, the claimant had paid and the Government had accepted a balance due on an account stated in a form indicating an adoption of the terms of the concessions. By this course of conduct, it was averred, the United States "assumed and adopted" all of the obligations imposed on the Government of Spain by the concessions, and agreed with the claimant to discharge and perform all of them and especially agreed to pay the annual subsidy of £4,500, as required by Art. 10 of the third concession.

Trial by the Court of Claims resulted in findings of fact, as follows: That the concessions were made to claimant as alleged and that all of the cables were completed and in use when the Treaty with Spain was signed, December 10, 1898; that the Government used the cables extensively for official dispatches which were given priority in transmission, but that this was in accordance with the International Telegraph Convention, as well as in compliance with the terms of the concessions; that the claimant charged the Government for messages over the Visayas cables at one-half the rate charged for private dispatches, which is the rate prescribed by the third concession, but that it "has paid the full rates charged by the claimant for messages over any of the lines" and claimant had authority to make its own rates; and that it is not true that the claimant transmitted messages over the Hongkong cable free of charge—"The United States Government has paid full established rates on the Hongkong-Manila cable."

It is further found that since December, 1901, the claimant has made claim to the subsidy in annual statements to the authorities of the Philippine Government, in which the terms of the concession granting it were referred to and in which the United States was charged with the amount of it then accrued. With respect to these, except as hereinafter noted, the court finds that whether any reply was made to them "does not appear from the record."

Much significance is attached by the claimant to the statement presented on June 11, 1905. The finding with respect to this is that on that date the claimant's representative forwarded to "The Secretary of Finance and Justice," an officer of the Philippine Government at Manila, a communication, with an attached statement, purporting to show the amount "due to the United States Government in the Philippines on account of the transmission

of all United States Government traffic over the Manila-Hongkong cable, as per the concession granted us for the laying of the same, up to and including December 31, 1904."

In this statement the Government is credited (as if the amount had not been paid) with what it had paid for service over the Hongkong-Manila cable, laid under the first and second concessions, from August 21, 1898, to December 31, 1904, and it is charged with "Visayas subsidy," under the third concession, £4,500 per annum to December, 1904. Thus a balance was arrived at of £4,712.10.6 in favor of the United States, as to the disposal of which "I shall be glad to receive your instructions," wrote the representative of the claimant.

In reply to this the Auditor of the Government of the Philippine Islands, to whom it had been referred, wrote to claimant's representative at Manila, acknowledging receipt of his letter in which it was stated "there is due the *Insular Government* under your concession the sum of £4,712.10.6" and the Auditor added "It is respectfully requested that said amount be deposited with the Insular Treasurer as miscellaneous revenue." Payment was made and receipt given by the Treasurer of the Government of the Philippine Islands for the amount as "due Government as per statement of account rendered by Eastern Extension, etc., Telegraph Co. to Secretary, Finance & Justice June 11, 1905."

Each year after 1905 the claimant sent a statement to the "Secretary of Finance and Justice" at Manila in the form following: "The United States Government at Manila in account with the Eastern Extension, Australasia and China Telegraph Co., Limited. . . . Free transmission of American Government Telegrams over Hongkong-Manila Section." Then follow credits for messages passing over the Hongkong-Manila cable, as if they had not been paid for, and a debit of the "Visayas

subsidy" accrued to the date of the statement. To these no reply appears to have been made.

It is expressly found that:

"Except the payment above referred to in 1905, the claimant has never paid anything into the treasury of the Philippine Government. It does not appear that any part of said sum was paid into the Treasury of the United States. Nor has the claimant paid any sum to the United States Government."

The only payment of the ten per cent. tax under the third concession was that made in 1905, £184.17.2, and the statement showing this balance in favor of the United States concluded:

"I therefore have the honor to request that the necessary permission be given to the Treasurer to receive these amounts, now standing to the credit of the United States Government in the Philippines."

Of its own motion the claimant, in 1899, made extensions of the Visayas cables at a considerable expense. But the finding with respect to this is:

"These extensions were carried out with the approval of the military authorities in control of the Philippines at that time, and by the sanction of the United States Government, but without prejudice to, and with the reservation of, all rights of the Government of the United States."

The following is from the court's finding of fact No. IX:

"Between the 10th day of December, 1898, and March, 1899, considerable correspondence was exchanged between the Government of the United States and the claimant regarding the transmission of official telegrams over the Hongkong-Manila cable at reduced rates.

"On the 1st of March, 1899, the Secretary of War transmitted to the chairman of the claimant company a telegram, stating that the War Department 'accepts the courteous offer of your company to transmit messages

free between Hongkong and Manila, providing that this acceptance leaves in abeyance Spanish concession which is now under consideration.' On the following day the claimant's reply was transmitted to the War Department, stating that the foregoing telegram had been received and the reservation therein noted, and that 'the company have pleasure in affording all possible facilities to the United States Government in connection with the transmission of their telegrams.' On the 28th of March, 1899, a written communication was transmitted by the War Department to the duly authorized representative of the claimant company, to the effect that 'upon careful reconsideration of the subject it is deemed inadvisible for the department to avail itself of your company's offer. I beg to state, therefore, that the department will pay the established rates on official cable messages, and all accounts of this character presented to the United States will be paid.' This communication concluded with a renewal of thanks 'for the voluntary reduction in rates which your company has so courteously tendered.' The United States Government has paid full established rates on the Hongkong-Manila cable, and has paid the established rates on the Visayas cables on its messages."

Upon these findings of fact and upon principles and analogies derived from the law of private contract, the court must proceed to judgment. For it was determined by this court on the former appeal, that any right in the defendant derived directly from the Treaty with Spain, or any obligation imposed upon the United States by principles of international law as a consequence of the cession of the Islands, would not be within the jurisdiction of the Court of Claims, and counsel for claimant, expressly disclaiming the assertion of any right under the Treaty of Paris, urge that the case be treated exactly as it would be if it arose between two private citizens.

So regarding the case. It is obvious that no express contract by the United States to adopt and be bound by the third or any of the concessions can be made out from the findings of fact, and it is equally clear that such an implied contract, using the words in any strict sense, cannot be derived from the findings, for it is plain that there is nothing in them tending to show that any official with power, express or implied, to commit that Government to such a contract ever intended to so commit it.

The contention of the claimant must be sustained, if at all, as a quasi-contract,—as an obligation imposed by law independent of intention on the part of any officials to bind the Government,—one which in equity and good conscience the Government should discharge because of the conduct of its representatives in dealing with the subject-matter.

It is argued that the United States should be held to have assumed the burden of the concession because it derived benefits and advantages from the use of the cables.

These cables were in operation when the United States Government assumed jurisdiction over the Islands. It extended a much more efficient governmental protection over the lines than they had before, but left the claimant in full ownership and control over them with the power to determine rates for service. The Government, to be sure, availed itself of the advantages of communication which the cables afforded, but for such service it paid the rates which the claimant demanded and which it must be assumed were adequate. From such circumstances as these, very clearly, the law will not raise an obligation on the part of the Government to assume the burden of the subsidy on the principle of undue enrichment or of advantage obtained. It used the cables as other customers used them and from such a use, paid

for at the full rate demanded, no obligation can be derived by implication.

It is further contended that the terms and conditions of the concession should be imposed on the Government because the officials of the Philippine Government accepted taxes computed as provided for by the third grant.

The finding of the Court of Claims is not that the Philippine Government demanded or exacted the small amount of taxes that was paid, but that the claimant itself computed the amount in the manner which it thought was provided for in the concession and tendered payment, which, after repeated urging, was accepted by local officers of the Philippine Government, so subordinate in character that it is impossible to consider them as empowered to commit the Government of the United States to the large responsibilities now claimed to spring from their conduct.

The finding with respect to extension of the cables in 1899 excludes all suggestion of the assumption of any liability by the United States on account of the expenditure involved.

The form of the statement of account of December 31, 1904, showing a balance favorable to the United States, which was paid to and accepted by the Treasurer of the Philippine Government, and from which so much is claimed, is not impressive as creating the asserted liability.

Here again the claimant, without suggestion of demand from the Government of the United States or even from the Philippine Government, prepared a statement and, in order to give it the form of an account, was obliged to treat as unpaid, charges for tolls over the Hongkong-Manila cable all of which had been paid by the United States Government and accepted by the claimant.

A separate government, sustained by its own revenues, has been maintained for the Philippine Islands ever since they were ceded to the United States. At first military,

it became a civil government in 1902, organized as provided for by an act of Congress (32 Stat. 691, c. 1369), with a Governor General, and executive, legislative and judicial departments, all subject to the supervision of the Secretary of War of the United States.

It is surprising that the claimant, when it desired to have these important concessions, with their large obligations, adopted by the Government of the United States, did not make application for that purpose directly to that Government or to its Secretary of War, or at least to the Governor General or legislative department of the Philippine Government, instead of relying for its adoption by implication, as it has done, chiefly upon the form in which the accounts were presented to the Secretary of Finance and Justice of the Philippine Government.

The action of a department head of the Philippine Government, (inconsistent with the position taken by the Secretary of War in 1899, with respect to the subject-matter) in accepting a voluntary payment of $23,000 cannot be made the sufficient basis for implying an obligation on the part of the Government of the United States to pay a bonus of a total aggregate of almost $440,000.

If doubt could be entertained as to the correctness of this conclusion it would be disposed of by the fact that when the claimant, in March, 1899, tendered to the Secretary of War, so far as appears the only official of the United States with large powers, who considered the subject, the privilege of free transmission of messages over its Hongkong-Manila cable, as was provided for in the first concession, the offer was politely but firmly declined, with the statement that "the department will pay the established rates on official cable messages, and all accounts of this character presented to the United States will be paid,"—a promise which the findings show that he and his successors in office have faithfully kept.

In the jurisdiction given to the Court of Claims Con-

gress has consented that contracts, express or implied, may be judicially enforced against the Government of the United States. But such a liability can be created only by some officer of the Government lawfully invested with power to make such contracts or to perform acts from which they may be lawfully implied. *Langford* v. *United States*, 101 U. S. 341, 345; *United States* v. *Buffalo Pitts Co.*, 234 U. S. 228; *Tempel* v. *United States*, 248 U. S. 121; *Ball Engineering Co.* v. *J. G. White & Co.*, 250 U. S. 55.

The foregoing discussion makes it palpably plain that no contract, express or implied, to pay the disputed subsidy, was made by any officer of the United States, and the judgment of the Court of Claims is therefore

Affirmed.